

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Miron Building Products Co. Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 12/1/73 - 11/30/76. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of February, 1981, he served the within notice of Decision by mail upon Miron Building Products Co. Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Miron Building Products Co. Inc.  
CPO Box 1788  
Kingston, NY 12401

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
5th day of February, 1981.

Orville R. Hageland

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Miron Building Products Co. Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 12/1/73 - 11/30/76. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of February, 1981, he served the within notice of Decision by mail upon Stephen Miron the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Stephen Miron  
Miron Building Products Co., Inc.  
CPO 1788  
Kingston, NY 12401

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
5th day of February, 1981.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

February 5, 1981

Miron Building Products Co. Inc.  
CPO Box 1788  
Kingston, NY 12401

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Stephen Miron  
Miron Building Products Co., Inc.  
CPO 1788  
Kingston, NY 12401  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
MIRON BUILDING PRODUCTS CO., INC.	:	DECISION
	:	
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Period December 1, 1973 through	:	
November 30, 1976.	:	

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Petitioner, Miron Building Products Co., Inc., CPO Box 788, Kingston, New York 12401, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period December 1, 1973 through November 30, 1976 (File No. 21243).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1979 at 9:45 A.M. and continued to conclusion before James Prendergast, Hearing Officer, at the same offices on June 28, 1979 at 1:15 P.M. Petitioner appeared by Stephen E. Miron, Esq. The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron and Frank Levitt, Esqs., of counsel).

ISSUE

Whether sales of building materials by the taxpayer to a vendee, during the course of renovations by the taxpayer to a building owned by said vendee, were exempt from sales taxes by virtue of section 1116 of the Tax Law, for the reason that the lessee of the building, an exempt organization, was the primary beneficiary of the sales.

FINDINGS OF FACT

1. On October 7, 1977, as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner, Miron Building Products Co., Inc. Said Notice was issued for the period December 1, 1973 through November 30, 1976 in the amount of \$12,578.00, plus penalty and interest of \$6,237.08, for a total due of \$18,815.08.

2. On February 22, 1977, Julie Miron, as an officer of Miron Building Products Co., Inc., signed a consent extending the period of limitation for assessment of sales and use taxes for the taxable period December 1, 1973 through November 30, 1976, up to and including December 20, 1977.

3. Thereafter, on November 10, 1977, Stephen E. Miron, vice-president and general counsel of Miron Building Products Co., Inc., filed a letter of protest to the aforementioned assessment, requesting a hearing in the matter.

4. Petitioner, Miron Building Products Co., Inc., was a corporation organized under the laws of New York and was engaged in the business of supplying lumber and other building materials. The officers and sole shareholders were: Julie Miron, Kenneth L. Miron, Stephen E. Miron and Hyman Greenspan.

5. These same individuals were the partners in Port Ewen Realty Co. ("Port Ewen"), the principal asset of which was a building (and the land upon which it was located) initially built for and leased to a corporation for use as a warehouse and distribution center. Upon termination of that lease by the tenant, Port Ewen entered into a lease agreement in February, 1975 with the Ulster County Board of Cooperative Educational Services ("BOCES").

6. The lease agreement with BOCES provided for a five-year term with a renewal option for another five years. The "basic annual rental" was \$202,500.00, with an additional annual rental in the amount of \$247,500.00, payable during

the initial five-year term and stated to constitute the consideration for alteration work to be performed by Port Ewen for the purpose of converting the demised premises into a facility for use by BOCES in providing educational services. The plans and specifications for the renovations were prepared by BOCES, and all work was subject to inspection and acceptance by a BOCES representative. The lease agreement stated in part:

"3. Port Ewen, in consideration of the rental hereinafter reserved, shall, at its own cost and expense, cause the demised premises to be renovated, altered, modified, repaired, improved and changed in conformity with the plans and specifications which shall be annexed hereto and made a part hereof...". (Emphasis supplied.)

7. Port Ewen engaged petitioner as the prime contractor on the project of renovation and remodeling. During the course of the renovations, petitioner sold to Port Ewen building materials at a price of \$251,560.00, which sales are at issue herein. It was petitioner's contention that said sales were exempt from taxes pursuant to section 1116 because the renovations performed were for the benefit and use of BOCES, a municipal corporation, and would be of no value to the landlord, Port Ewen, or to a subsequent tenant.

8. Petitioner also contended that the proceeding before the State Tax Commission was, and any determination by the Commission would be premature because there was pending before the Industrial Commission of the Department of Labor a proceeding to determine whether the renovations qualified as a "public work" under the provisions of the Labor Law. It was petitioner's position that if the Industrial Commission found the project to so qualify, the sales would then be exempt from taxes.

#### CONCLUSIONS OF LAW

A. That section 1116 of the Tax Law, which exempts sales to certain organizations from the taxes imposed by Article 28, provides in pertinent part:

"(a)...[A]ny sale...by or to any of the following...shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York, or any of its agencies, instrumentalities, public corporations...or political subdivisions where it is the purchaser, user or consumer..."

B. That said section did not exempt from tax the sales at issue by petitioner to the partnership Port Ewen. The building materials were sold directly to and were paid for by the owner of the building, Port Ewen, not any organization exempted by section 1116. In the Matter of Bes Corp. v. Tully, 61 A.D.2d 1097, rev'd mem. 46 N.Y.2d 1038 (1979). That a municipal corporation was the tenant of the building is irrelevant.

C. That any determination by the Department of Labor as to the qualification of the renovations as a "public work" pursuant to Article 8 of the Labor Law, which mandates inter alia the payment of wages and supplements at prevailing rates, would not be binding upon the State Tax Commission in its administration of the provisions of the Tax Law. Since the issues before the Industrial Commission and the issues before the Tax Commission are distinct and dissimilar, the doctrine of collateral estoppel would have no application.

D. That the petition of Miron Building Products Co., Inc. is hereby denied and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 7, 1977 is sustained in full.

DATED: Albany, New York

FEB 05 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

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COMMISSIONER