

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

October 7, 1983

Utica Wilbert Vault Co., Inc.
1610 Madison Ave.
Utica, NY

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 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 Law 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
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
James C. Oster
Groben, Liddy, Cardamone & Gilroy, Esqs.
185 Genesee St.
Utica, NY 13503
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Utica Wilbert Vault 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 9/1/75-8/31/78. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon Utica Wilbert Vault Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Utica Wilbert Vault Co., Inc.
1610 Madison Ave.
Utica, NY

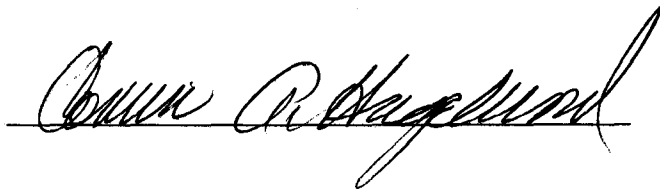
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
7th day of October, 1983.



Susan Powell



Connie R. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Utica Wilbert Vault 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 :
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State of New York
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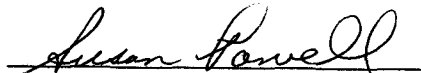
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 7th day of October, 1983, she served the within notice of Decision by certified mail upon James C. Oster the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

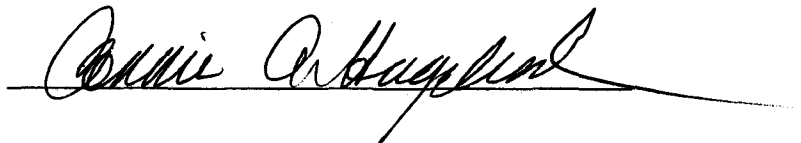
James C. Oster
Groben, Liddy, Cardamone & Gilroy, Esqs.
185 Genesee St.
Utica, NY 13503

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
7th day of October, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
UTICA WILBERT VAULT 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 September 1,	:	
1975 through August 14, 1978.	:	

Petitioner, Utica Wilbert Vault Co., Inc., 1610 Madison Avenue, Utica, New York, 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 September 1, 1975 through August 14, 1978 (File No. 24694).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on March 23, 1982 at 10:45 A.M. Petitioner appeared by James C. Oster, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioner is liable for use tax on its inventory of materials used in the manufacture of burial vaults.

II. Whether petitioner was required to collect sales tax on the sale of its inventory in a bulk sales transaction.

FINDINGS OF FACT

1. Petitioner, Utica Wilbert Vault Co., Inc., was engaged in the manufacture, sale and installation of burial vaults. On August 14, 1978, the business was sold to Mohawk Wilbert Vault Co. for \$100,000.00. Petitioner remitted tax of

\$2,464.00 on that portion of the sales price attributable to fixtures and equipment. The inventory on hand was sold to the purchaser for \$23,000.00. The inventory consisted of completed burial vaults and materials used to manufacture such vaults.

2. On October 24, 1978, 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 covering the period September 1, 1975 through August 14, 1978 for taxes due of \$1,840.00, plus minimum statutory interest of \$26.07, for a total of \$1,866.07.

3. On audit, the Audit Division held petitioner liable for use tax of \$920.00 on the ending inventory of \$23,000.00 on the basis that the sale of materials to petitioner used to manufacture burial vaults were retail sales since the installation of said vaults constituted a capital improvement to real property. The Audit Division also determined that the sale of the inventory in the bulk sale transaction was a retail sale to the purchaser since the purchaser was in same business as petitioner. Therefore, it imposed a sales tax of \$920.00 which petitioner failed to collect from the purchaser.

4. Petitioner argued that a sales tax was either paid to the supplier of materials at the time of purchase or it paid a use tax on those purchases where the vendor did not collect a sales tax on quarterly sales and use tax returns filed for the period at issue. However, Petitioner adduced no documentary evidence to substantiate this argument.

5. Petitioner, in good faith, accepted a Contractor Exempt Purchase Certificate issued by Mohawk Wilbert Vault Co. for the purchase of the inventory.

CONCLUSIONS OF LAW

A. That petitioner purchased materials for use in performing a capital improvement (installation of a burial vault) and therefore, such purchases by a

contractor constituted a retail sale within the meaning and intent of section 1101(b)(4) of the Tax Law. However, section 1119(c) of the Tax Law provides for a credit or refund equal to the amount of tax imposed on the use of tangible personal property if the contractor later makes a retail sale of such tangible personal property.

That petitioner sold its ending inventory (completed vaults and materials) uninstalled to the purchaser of the business; accordingly, petitioner is not liable for the use tax of \$920.00 asserted by the Audit Division on such materials.

B. That a Contractor Exempt Purchase Certificate is an exemption certificate within the meaning and intent of section 1132(c) of the Tax Law (Matter of Modern Suppliers, Inc. State Tax Commission, November 14, 1980); that petitioner accepted such certificate in good faith and therefore, was not required to collect tax on the sale of inventory to Mohawk Wilbert Vault Co. The liability for any misuse of an exemption certificate rests with the purchaser. Accordingly, the sales tax of \$920.00 asserted against petitioner is cancelled.

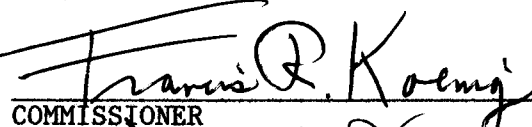
C. That the petition of Utica Wilbert Vault Co., Inc. is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued October 24, 1978 is cancelled.

DATED, Albany, New York

STATE TAX COMMISSION

OCT 07 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>William Wilbert Van Dine</i>	
Street and No. <i>1610 Madison Ave</i>	
P.O., State and ZIP Code <i>Utica NY</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 470 316 115

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>James C Oster</i>	
Street and No. <i>620 E. 1st St, Albany, NY 12202</i>	
P.O., State and ZIP Code <i>Utica NY 13503</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982