

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Robert Given	: : : : : :	: : : : : :
for Redetermination of a Deficiency or Revision of a Determination or Refund of Sales & Use Tax under Article 28 & 29 of the Tax Law for the Period 3/1/72-2/28/74.		AFFIDAVIT OF MAILING

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of July, 1984, he served the within notice of Decision by certified mail upon Robert Given, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Given
7 W. Ave.
Elba, NY 14058

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of July, 1984.

David Parchuck

James A. H. H. H.
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Morley P. Davies, Leonard Morris, :
Jerome Rosenthal, and Robert Given :
AFFIDAVIT OF MAILING :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 3/1/72-2/28/74. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of July, 1984, he served the within notice of Decision by certified mail upon Gerald O. Williams, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald O. Williams
Murray and Williams
2 Court Street Plaza, P.O. Box 402
Batavia, NY 14020

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of July, 1984.

David Parchuck

Constance Anderson
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 9, 1984

Robert Given
7 W. Ave.
Elba, NY 14058

Dear Mr. Given:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Gerald O. Williams
Murray and Williams
2 Court Street Plaza, P.O. Box 402
Batavia, NY 14020
Taxing Bureau's Representative

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

July 9, 1984

Jerome Rosenthal
401 Hillcrest Dr.
Cincinnati, OH 45215

Dear Mr. Rosenthal:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Julius M. Ramm
Silverberg, Yood, Sellers & Ramm
635 Brisbane Bldg.
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Leonard Morris	: : : : : :	: : : : : :
		AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision of a Determination or Refund of Sales & Use Tax under Article 28 & 29 of the Tax Law for the Period 3/1/72-2/28/74.		

State of New York }
County of Albany } ss.:

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of July, 1984, he served the within notice of Decision by certified mail upon Leonard Morris, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leonard Morris
166 Cranburne Lane
Amherst, NY 14221

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of July, 1984.

David Parchuck

James A. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 9, 1984

Leonard Morris
166 Cranburne Lane
Amherst, NY 14221

Dear Mr. Morris:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Julius M. Ramm
Silverberg, Yood, Sellers & Ramm
635 Brisbane Bldg.
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Morley P. Davies, Leonard Morris, :
Jerome Rosenthal, and Robert Given :
AFFIDAVIT OF MAILING :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article 28 & 29 of the Tax Law for the :
Period 3/1/72-2/28/74. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of July, 1984, he served the within notice of Decision by certified mail upon Julius M. Ramm, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Julius M. Ramm
Silverberg, Yood, Sellers & Ramm
635 Brisbane Bldg.
Buffalo, NY 14203

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of July, 1984.

David Parchuck

James C. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

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

July 9, 1984

Morley P. Davies
260 Aero Drive
Cheektowaga, NY 14225

Dear Mr. Davies:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Julius M. Ramm
Silverberg, Yood, Sellers & Ramm
635 Brisbane Bldg.
Buffalo, NY 14203
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
MORLEY P. DAVIES, LEONARD MORRIS, :
JEROME ROSENTHAL, AND ROBERT GIVEN : 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 March 1, 1972 :
through February 28, 1974. :

Petitioners, Morley P. Davies, 260 Aero Drive, Cheektowaga, New York 14225, Leonard Morris, 166 Cranburne Lane, Amherst, New York 14221, Jerome Rosenthal, 41 Hillcrest Drive, Cincinnati, Ohio 45215, and Robert Given, 7 West Avenue, Elba, New York 14058, filed petitions 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 March 1, 1972 through February 28, 1974 (File Nos. 21817, 21818, 21819 and 21816).

A consolidated formal hearing was commenced before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on April 20, 1982 at 9:15 A.M., and was continued to conclusion before Dennis M. Galliher, Hearing Officer, at the same offices on August 16, 1983. Petitioners Morley P. Davies, Leonard Morris and Jerome Rosenthal appeared at all times by Silverberg, Yood, Sellers and Ramm, Esqs. (Julius M. Ramm, Esq., of counsel). Petitioner Robert Given appeared at all times by Murray & Williams, Esqs. (Gerald O. Williams, Esq., of counsel). The Audit Division appeared on the April 20, 1982 hearing date by Paul B. Coburn, Esq. (Patricia L. Brumbaugh, Esq., of counsel) and on the August 16, 1983 hearing date by John P. Dugan, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUES

I. Whether Modulex Enterprises, Inc. was required to collect and remit sales tax on mobile homes manufactured by it and allegedly sold only to mobile home dealers for subsequent resale during the period at issue.

II. Whether, in the event Modulex Enterprises, Inc. was so required to collect and remit sales tax, petitioners were individually responsible for such collection and remittance.

FINDINGS OF FACT

1. On April 17, 1975, the Audit Division issued to each of the petitioners herein a separate Notice of Determination and Demand for Payment of Sales and Use Taxes Due asserting tax due from each petitioner in the amount \$34,247.15 for the period March 1, 1972 through February 28, 1974, plus penalty and interest. Each of the notices issued explained the asserted deficiency as follows:

"[Y]ou are personally liable as an officer of Modulex Enterprises, Inc. under Sections 1131(1) and 1133 of the Tax Law for the following taxes determined to be due in accordance with Section 1138(a) of the Tax Law."

2. Modulex Enterprises, Inc. ("Modulex") was, during the period of its existence, a corporation engaged in the business of manufacturing mobile homes. Modulex was incorporated in or about February of 1972, made its first sale in or about June of 1972 and ceased doing business in or about February of 1974.

3. Modulex was incorporated by Morley P. Davies who was its president, Ernest G. Fekete who was its vice-president, Jerome Rosenthal who was its secretary and Leonard Morris who was its treasurer. These four persons served as Modulex's board of directors and each of these four persons owned (individually) twelve and one-half shares of Modulex's one hundred outstanding shares of stock, with the remaining fifty shares of Modulex stock owned by Moveable

Homes, Inc. ("Moveable"). All of the outstanding shares of Moveable were, in turn, owned in equal amounts by the aforementioned four individuals.

4. The initial materials inventory and office supplies with which Modulex commenced operations were acquired at an auction of the business assets of Mighty Mobile, Inc. ("Mighty"). Mighty had been owned, in part, by Messrs. Davies and Morris, had been engaged in the manufacture of mobile homes, and had gone out of business sometime prior to the formation of Modulex. Mr. Davies had been vice-president of sales for Mighty and had left Mighty when it was bought by another company and before it went bankrupt. Modulex had many of the same customers as Mighty.

5. Modulex was engaged solely in the manufacture of mobile homes and did not own or operate mobile home parks or otherwise rent or maintain the homes it manufactured. Modulex allegedly sold its homes to mobile home dealers only, and not to retail customers. If persons other than dealers sought to purchase a home directly from Modulex, they would be referred to a dealer through whom the sale would be handled. Sales tax was not charged or collected by Modulex during the period of its existence on any of its sales.

6. Petitioners asserted it was their belief that Modulex was not required to charge or collect sales tax, since all sales were made by Modulex to dealers and not to retail customers, and that it was each dealer's responsibility for sales tax collection and remittance. Petitioners, as well as Modulex's sole bookkeeper, Ms. Kay Miggins, testified that Modulex obtained "exempt numbers" (vendor identification numbers) from the dealers to whom it sold its homes, and that such numbers were written on Modulex's sales invoices.

7. The daily operation of Modulex was managed by petitioner Robert Given, under the title of general manager. Mr. Given had previously worked for Mighty

and was familiar with the designing and manufacturing of mobile homes, and with the overall operation of the business from construction to sale. During the first three or four months in which Modulex was doing business, a monthly meeting was held where Mr. Given, the four officer/directors of Modulex, Ms. Miggins and occasionally Mr. John Kagebein (Modulex's sales manager) were present, and where the status of the business in general would be discussed. During this period, Mr. Given directed which bills were to be paid and the order of their payment. Thereafter, as Modulex began to experience financial difficulties, these meetings were held on a bi-weekly and, finally, on a weekly basis. A list of bills outstanding and the order in which each bill was due was prepared for these meetings by Ms. Miggins. Decisions as to which creditors' bills were to be paid were made by those present at these meetings, with increased involvement by the four officer/directors as funds grew tighter.

8. In or about late May of 1973, one Mr. Robert Potteiger became involved with Modulex, allegedly through the infusion of \$50,000.00 into the business. In substance, an agreement had been reached between Mr. Potteiger, the four officer/directors of Modulex, and Marine Midland Bank whereby the four officer/directors were to resign from Modulex and sign over their combined total of fifty shares of Modulex stock to Mr. Potteiger. In addition, they were to cause Moveable to surrender its fifty Modulex shares to Modulex to be retired by Modulex, thus leaving Mr. Potteiger as the sole owner of all fifty shares of Modulex stock which would have remained outstanding. This agreement was allegedly reached, approved and consummated in the interest of seeing Mr. Potteiger invest money in the faltering Modulex, and with the unwritten understanding that Mr. Potteiger would issue debentures to each of the four officer/directors of Modulex in the future in the amount (unspecified) of their original investment

in Modulex if Modulex (under Potteiger) were to succeed. This agreement was allegedly sanctioned by Marine Midland Bank as Modulex's main lender under a note and line of credit. Petitioners characterized this as a gentleman's agreement, particularly regarding the debentures, with no documentary evidence of such agreement or any of the acts associated therewith offered in evidence, except for a letter to Mr. Given dated May 24, 1973, advising that Mr. Potteiger was taking over as majority stockholder and that the four officer/directors were resigning their offices so Mr. Potteiger alone could run the company. Petitioners testified that it was Mr. Davies' refusal to sign prior to being given a chance to read certain papers pertaining to this agreement and Mr. Potteiger's insistence that he do so which caused a rift between Messrs. Davies and Potteiger and led to Mr. Davies' complete disassociation from Modulex in May of 1973.

9. After Mr. Potteiger became involved with the business, Mr. Davies was out of the picture completely and none of the other petitioners, including Mr. Given, exercised any control over the payment of Modulex bills or the manner, particularly financial, in which the business was operated. A second checking account, opened in the name of "R. M. Potteiger as agent for Modulex", was used in addition to the one Modulex checking account previously maintained. Mr. Potteiger allegedly controlled the deposit of Modulex sales receipts and the payment of all bills from the time he entered the business in late May of 1973 until Modulex ceased doing business in February of 1974. Mr. Given, who remained as general manager throughout Modulex's existence, explained that Mr. Potteiger took over completely and directed all financial aspects of the business operation of Modulex.

10. None of the four petitioners signed checks on Mr. Potteiger's account nor were they authorized or otherwise able to do so. The Modulex account required one signature to issue a valid check. It appears that some Modulex payrolls were paid from the Modulex account after Mr. Potteiger became involved in the business. Other bills paid from this account (as opposed to the Potteiger account) were not specified, nor was a breakdown of deposits between the two accounts supplied. It was asserted that customers' checks drawn as payable to Modulex were deposited into the Modulex account.

11. Mr. Given and Ms. Miggins opened and reviewed all of Modulex's incoming mail.

12. There were no meetings, as described in Finding of Fact "7", after Mr. Potteiger became involved in the business.

13. According to testimony by Ms. Miggins, Modulex sold only to dealers (for resale) and obtained a vendor identification number from each dealer. She recalled sending Mr. Kagebein back to dealers occasionally to get such numbers, and further that she thought such numbers were written on the purchase invoices. However, invoices in evidence did not reflect such numbers thereon.

14. It was noted that Mr. Potteiger was a mobile home dealer who also owned one or more trailer parks and who had purchased mobile homes from Modulex prior to becoming involved with operating Modulex.

15. Dealers sometimes brought their customers to Modulex's plant to show construction methods or to allow customers to pick out various trim items (e.g. moldings, colors, decor, door types, etc.) to be placed in their homes. This was considered a good sales technique, and assertedly is why individual customers' names as well as dealers' names appeared on some Modulex invoices. Although a few invoices reflected sales tax calculated, this was allegedly done to show

customers the total price to be paid by them to the dealer from whom they were purchasing the home.

16. Only four resale certificates were offered in evidence by petitioners, although Modulex sold at least 76 homes during the period of its existence. Furthermore, these four certificates were all dated later than the years at issue, and one was for a customer not included on a ledger sheet reflecting those customers to whom Modulex made sales.

17. In addition to his role as an officer/director of Modulex, Mr. Davies was also employed by Modulex commencing on April 18, 1972, but had nothing to do with the business in either capacity after Mr. Potteiger came in. During his time as an employee, Mr. Davies performed the function of a general liason, troubleshooter, idea man, salesman, etc. As part of his work at Modulex during the initial period of its existence, Mr. Given determined the bills to be paid and signed checks to pay such bills. However, after Mr. Potteiger came in, Mr. Given only ran the "men and materials", with no input on other matters. He could not recall who else was authorized to sign Modulex checks.

18. Mr. Given held no office or stock of Modulex and testified he had no formal notice that Mr. Potteiger was taking over, although a letter addressed to Mr. Given, dated May 24, 1973 and introduced in evidence, stated that Mr. Potteiger was taking over and was becoming Modulex's majority stockholder, that the four officer/directors were resigning to allow Mr. Potteiger to run the company, and that this was all occurring pursuant to an agreement reached among the named parties which was to be ratified at a later board of directors meeting. Mr. Given never paid a bill after Mr. Potteiger's involvement without first obtaining Mr. Potteiger's approval, never paid if Mr. Potteiger said not to pay and also never supplied a list of bills to Mr. Potteiger as had been

done previously for the board of directors. He explained that the bills were paid out of whichever bank account had money in it at a given time.

19. Morley Davis, before being relieved of his duties on or about May 25, 1973, held the office of president of Modulex, was employed by Modulex as previously described and was on the premises one to two days each week. The other three board members were at Modulex's premises approximately once per month.

20. In February of 1974, Marine Midland, as Modulex's chief lender, closed and padlocked Modulex's premises, and thereafter an auction of Modulex's assets was held. Petitioners assert that many of Modulex's records became unavailable as a result of this auction. Some of the petitioners were present at this auction, but did not try to retrieve any of Modulex's records.

21. Mr. Davies' last paycheck as a Modulex employee was on May 25, 1973, but he testified he had been closed out of the business several weeks earlier following his disagreement with Mr. Potteiger. He could not remember if he actually signed his stock over to Mr. Potteiger, and stated that he may have had authority to sign Modulex checks but was sure he had never signed any.

22. Mr. Morris could not recall if he had authority to sign Modulex checks or if he ever did, in fact, sign any checks. He testified he was not involved in the company's day-to-day operations, that he left Modulex as of May, 1973 and that he had turned his stock over to Mr. Potteiger.

23. Mr. Rosenthal, who did not appear at the hearing, was alleged to have been primarily an investor who was not involved in the daily operation of Modulex's business.

24. Mr. Morris had nothing further to do with Modulex from the time Mr. Potteiger took over until November or December of 1973, at which time

Marine Midland advised him that payments were not being made on a Modulex note to Marine Midland personally guaranteed by the four officer/directors. Mr. Morris indicated that Marine Midland advised him not to worry since Mr. Potteiger had a net worth in excess of one million dollars. However, Modulex apparently defaulted on this note, resulting in the closing of the business by Marine Midland. It was not specified whether or not personal recourse was attempted against the four officer/directors based on their guarantee of the note.

25. Mr. Morris testified that the individual shares owned by the officer/directors were transferred over to Mr. Potteiger, that Moveable's Modulex shares were to be retired in consideration solely for Mr. Potteiger's infusion of capital into the business and that the debentures were never issued to the four officer/directors.

26. Petitioners assert that Modulex's sales were only and always to dealers and, as such, were sales for resale not subject to sales tax, that no sales tax should have been charged or collected by Modulex and that this was the belief and premise under which Modulex operated. Petitioners further assert that the four officer/directors were all effectively out of the business as of the end of May, 1973 due to the agreement with Mr. Potteiger, that petitioners Leonard Morris and Jerome Rosenthal had no daily involvement with the business at any time and that none of the petitioners were willful with regard to the non-collection of sales tax. Petitioner Given asserts he had no ownership interest in Modulex and, although he remained at Modulex, he had no control over any payments after Mr. Potteiger came in.

27. The Audit Division asserts, by contrast, that the mobile homes sold were tangible personal property subject to tax, that no certificates for resale were tendered except for the four certificates offered in evidence, that no

vendor identification numbers were reflected on the invoices despite allegations to the contrary, and that the evidence does not support petitioners' assertions or warrant cancellation of the deficiencies.

CONCLUSIONS OF LAW

A. That petitioners do not contest the taxability of mobile homes sold to retail customers during the period at issue. Rather, it is petitioners' position that the homes sold by Modulex were all sold to mobile home dealers for subsequent resale to their customers, and that the sales tax liability was thus the responsibility of such dealers. However, only four resale certificates, each of which was executed after the period at issue and one of which was from a person not included on the ledger sheet of Modulex's customers, were offered in evidence. Vendor identification numbers from dealers were allegedly obtained, yet could not be produced by petitioners nor were such numbers reflected on invoices offered in evidence. Furthermore, petitioners did not know if all of the homes sold by Modulex were in fact resold or were rented out by some of the purchasers.

B. That section 1132(c) of the Tax Law provides a presumption that all sales of tangible personal property are taxable sales, and that the burden of proving the contrary is upon the vendor. This section further provides that for a sale to be deemed non-taxable as a sale for resale [as defined by Tax Law section 1101(B)(4)], a resale certificate, in proper form, must be provided. In view of the lack of proper resale certificates or production of vendor identification numbers on any invoices, and the uncertainty as to whether homes were actually resold or otherwise used (i.e. rented), the basis for the deficiencies must be sustained.

C. That section 1133(a) of the Tax Law provides, in part, that every person required to collect any tax imposed by Article 28 shall be personally liable for the tax imposed. Section 1131(1) of the Tax Law provides:

"Persons required to collect tax' or 'persons required to collect any tax imposed by this article' shall include: every vendor of tangible personal property or services;... Said terms shall also include any officer or employee of a corporation or of a dissolved corporation who as such officer or employee is under a duty to act for such corporation in complying with any requirement of this article and any member of a partnership."

D. That the resolution of whether petitioners were persons required to collect tax on behalf of Modulux turns upon a factual determination in each case. Vogel v. N.Y. State Dep't. of Taxation and Finance, 98 Misc.2d 222; Chevlowe v. Koerner, 95 Misc.2d 388. Relevant factors in such a determination include, but are not limited to, the following: the day-to-day responsibilities in the corporation, involvement in and knowledge of the financial affairs of the corporation, the identity of who prepared and signed tax returns and the authority to sign (as well as the signing of) checks.


E. That each of the four petitioners was, at least until the end of May 1973, a person responsible for the collection and payment of tax. Each had knowledge of the financial affairs of the business and was involved in determining which creditors were to be paid and the priority of their payment. After May of 1973, the control and operation of Modulux was effectively taken over by Mr. Potteiger. After this time, none of the petitioners had any voice in or control over the financial affairs of Modulux. Although petitioner Robert Given worked at Modulux during the entire period of its existence, he was not in a position of having the authority or ability to comply with the requirements of section 1133 of the Tax Law after Mr. Potteiger's takeover in May, 1973.

F. That the petitions of Morley P. Davies, Leonard Morris, Jerome Rosenthal and Robert Given are granted to the extent that the portions of the deficiencies representing tax due after May of 1973 are cancelled. However, the petitions are denied with regard to tax due for periods prior to May of 1973 and the portion of the deficiencies pertaining thereto are sustained.

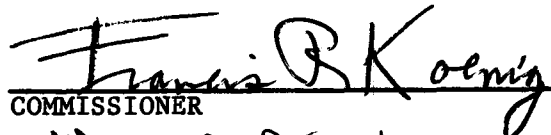
DATED: Albany, New York

STATE TAX COMMISSION

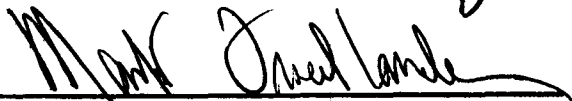
JUL 09 1984



PRESIDENT



COMMISSIONER



COMMISSIONER

P 440 977 296

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Barbara Rosenthal</i>	
Street and No. <i>101 Hillcrest Dr.</i>	
P.O., State and ZIP Code <i>Channahon OH 44815</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 440 977 295

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Renard M. Morris</i>	
Street and No. <i>106 Choptank Lane</i>	
P.O., State and ZIP Code <i>Camden, NJ 08102</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 440 977 293

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Murphy P. Devos</i>	
Street and No. <i>760 Aero Dr.</i>	
P.O., State and ZIP Code <i>Chickadee NJ 07025</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 440 977 297

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Donald O. Willman</i>	
Street and No. <i>Murray J. Willman</i>	
P.O., State and ZIP Code <i>2 Court St. Elgin</i>	
Postage	\$
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	

Form 3800, Feb. 1982

P 440 977 298

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Robert Gure</i>	
Street and No. <i>7 W. Ave.</i>	
P.O., State and ZIP Code <i>Elmhurst, NY 11408</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	

Form 3800, Feb. 1982

P 440 977 294

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Arthur M. Hahn</i>	
Street and No. <i>1635 Broadway</i>	
P.O., State and ZIP Code <i>Buffalo, NY 14203</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	

Form 3800, Feb. 1982