

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Morton Buildings, Inc. :  
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 9/1/78-8/31/81. :  
:

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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 16th day of July, 1985, he served the within notice of Decision by certified mail upon Morton Buildings, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morton Buildings, Inc.  
252 W. Adams  
Morton, IL 61550

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  
16th day of July, 1985.

David Parchuck

James R. Haggard  
Authorized to administer oaths  
pursuant to Tax Law section 174



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

July 16, 1985

Morton Buildings, Inc.  
252 W. Adams  
Morton, IL 61550

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, 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  
Abraham M. Stanger  
Seyfarth, Shaw, Fairweather & Geraldson  
520 Madison Avenue  
New York, NY 10022  
Taxing Bureau's Representative



FINDINGS OF FACT

1. On December 20, 1981, the Audit Division issued to petitioner, Morton Buildings, Inc., a Notice of Determination and Demand for Payment of Sales and Use Taxes Due, assessing sales and use taxes pursuant to Articles 28 and 29 of the Tax Law for the period September 1, 1978 through August 31, 1981 in the amount of \$401,170.61, plus interest.

2. Petitioner is a corporation organized under the laws of Illinois and has its principal place of business in Morton, Illinois. In New York, petitioner maintains three business premises, consisting of sales offices and erection facilities, in Warsaw, Homer and Cobleskill. Petitioner is engaged in the manufacture, sale and erection of pre-engineered timber-frame, metal-sheathed buildings for agricultural and commercial use. The overall style of the buildings is uniform, but various features, such as windows, doors and skylights, may be specially ordered and the dimensions may be varied to suit the customer's needs.

3. Petitioner has several factories, all of which are located outside New York. Petitioner purchases the materials (e.g., lumber and coils of steel) used in its business in bulk outside New York; materials are not purchased for application to any particular customer order. At these out-of-state factories, petitioner's employees manufacture the building components and some of the hardware which will be used in constructing buildings at customers' premises.

4. Petitioner's sales representatives schedule appointments with prospective customers and visit them at their business locations to determine their needs and to furnish cost estimates. If a customer wishes to purchase a Morton building, he/she executes a written contract and tenders a downpayment; the printed form contract provides, in pertinent part:

"It is understood by the parties hereto that the terms and conditions of this contract and the financial ability of the purchaser are subject to acceptance at the Morton, Illinois office of Morton Buildings, Inc.; and that prior to such acceptance the entire liability of Morton Buildings, Inc. under this contract may be discharged by the return of any monies which the purchaser may have deposited as a condition of this contract."

At that time, the sales representative also secures from any New York customer a properly completed Certificate of Capital Improvement with respect to the erection of the building. The sales representative subsequently forwards the contract, downpayment and Certificate of Capital Improvement to petitioner's main office in Illinois for approval. Upon approval, the necessary building components are withdrawn from inventory and certain operations, such as the cutting of windows and doors and the partial assembly of some components, are performed. The components are then transported to the customer's site.

5. The customer is responsible for any required site preparation, such as leveling of the ground. All construction labor is performed by petitioner's employees.

6. The assessment under consideration rests on the following two bases:

(a) Use tax due in the sum of \$1,701.35 upon petitioner's recurring purchases. This portion of the assessment is not in dispute.

(b) Use tax of \$399,469.26 upon materials petitioner used in capital construction. The examiner based this portion of the assessment on "cost" figures which were utilized by petitioner to determine the profitability of projects and which consequently included certain labor and overhead costs incurred by petitioner in its manufacturing activities.

7. On infrequent occasions, petitioner sells replacement parts, as available, to customers who previously purchased and had erected a Morton building.

CONCLUSIONS OF LAW

A. That except to the extent that tangible personal property has been or will be subject to the sales tax, section 1110 of Tax Law Article 28 imposes a compensating use tax for the use within this state of tangible personal property purchased at retail.


B. That petitioner purchases tangible personal property (raw materials) outside this state; manufactures, processes and assembles the tangible personal property into building components; and erects capital improvements in this state from such components. Were petitioner to purchase the building components from third party manufacturers, it would be liable for the compensating use tax based upon the cost of the components (section 1115[a][17]; 20 NYCRR 527.7[b][5]). However, insofar as petitioner itself manufactures the building components, but does not offer the components for sale in the regular course of its business, it is required to pay the tax based on the cost of the raw materials it used in manufacturing, processing and assembling the components (20 NYCRR 531.3[b][5]).


C. That the petition of Morton Buildings, Inc. is granted to the extent indicated in Conclusion of Law "B"; the assessment issued on December 20, 1981 is to be reduced upon petitioner's provision of the relevant information to the Audit Division; and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 16 1985

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

P 095 690 902

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to <i>Dr. Robert M. Stanger</i>	
Street and No. <i>New York State Thruway</i>	
P.O., State and ZIP Code <i>570 Millard Ave New York NY 10022</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	

P 095 690 901

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED  
NOT FOR INTERNATIONAL MAIL

(See Reverse)

★ U.S.G.P.O. 1984-446-014

PS Form 3800, Feb. 1982

Sent to <i>Murton Building Co</i>	
Street and No. <i>252 W. Adams</i>	
P.O., State and ZIP Code <i>Murton Ill 61550</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	