

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MALCOLM HALL

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s)~~ Period(s) :  
March, 1973.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Catherine Steele, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 30th day of November, 1976, she served the within  
Notice of Determination by ~~(certified)~~ mail upon Malcolm Hall  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:  
Mr. Malcolm Hall  
RFD #1  
Hoosick Falls, New York 12090  
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~~ 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

30th day of November, 1976

Catherine Steele

Janet M. Hall

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MALCOLM HALL

AFFIDAVIT OF MAILING

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a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~Year(s) or~~ Period(s) :  
March, 1973.

State of New York  
County of Albany

Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of November, 1976, she served the within Notice of Determination by ~~(certified)~~ mail upon Gerald A. Harley (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Gerald A. Harley, Esq.  
145 Main Street, P.O. Box 2  
Hoosick Falls, New York 12090  
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

30th day of November, 1976

Catherine Steele

Janet Bush



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 30, 1976

TELEPHONE: (518) **457-3850**

Mr. Malcolm Hall  
RFD #1  
Hoosick Falls, New York 12090

Dear Mr. Hall:

Please take notice of the **DETERMINATION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **1138 & 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

*Frank J. Puccia*  
**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
MALCOLM HALL	:	DETERMINATION
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, 1973.	:	

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Applicant, Malcolm Hall, RFD # 1, Hoosick Falls, New York 12090, has filed an application 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, 1973. A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York on June 14, 1976, at 1:15 P.M. Applicant appeared by Gerald A. Harley, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Solomon Sies, Esq. of counsel).

ISSUE

Is applicant entitled to a refund for the payment of sales tax on the purchase of a capital improvement or is the nature of the contractual agreement such that the sales tax so included is an element of the contractor's cost?

FINDINGS OF FACT

1. On June 3, 1974, applicant, Malcolm Hall, filed an application for credit or refund of state and local sales or use tax in the amount of \$840.00.

2. Applicant, Malcolm Hall, entered into an agreement with contractor, Morse and Butler, Inc. on October 27, 1972. The agreement stipulates in part, that for the sum of \$26,518.00, the contractor will build and erect a modular home on the foundation provided by the applicant. The contractor was also responsible for the connection of the electrical, plumbing and heating systems. The agreement contained a provision for sales tax which stated that "all items of personal property included in the aforesaid contract price shall be subject to the collection of New York State sales tax which shall be paid by the purchaser."

3. A sales order breakdown prepared by Morse and Butler, Inc. dated October 20, 1972, indicated that a tax in the amount of \$840.00 was included in the total contract price of \$26,518.00. A notation on this document indicated that the modular home cost the contractor \$14,000.00 and generated a sales tax of \$840.00.

4. On December 20, 1972, contractor, Morse and Butler, Inc. issued a check to New York State Sales Tax Bureau for \$840.00.

CONCLUSIONS OF LAW

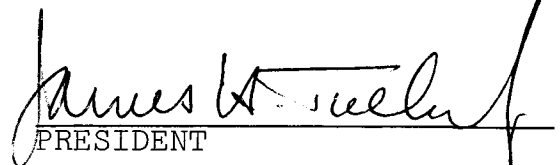
A. That the contractual agreement between the applicant and the contractor is a lump sum capital improvement contract in

the amount of \$26,518.00. There is no specific amount set forth in the agreement for the payment of sales tax by the applicant. Moreover, the provision for the payment, by the applicant of sales tax on the personal property included in the contract price contravenes section 1101(B)(4)(i) of the Tax Law. When personal property is consumed in the performance of a lump sum capital improvement contract, the sales tax liability of the contractor is naturally an element in the price of such contract. The inclusion of the contractor's sales tax obligation in a sales order estimate to arrive at a final contract price is not evidence that the purchaser paid a sales tax.

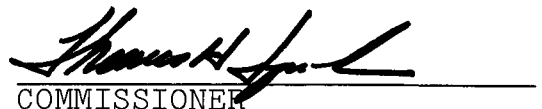
B. That the application of Malcolm Hall is denied and the refund denial issued June 27, 1974, is sustained.

DATED: Albany, New York  
November 30, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER