

BUREAU OF LAW

*Sales Tax Determinations
A - Z*

MEMORANDUM

*Plattsburgh Mobile Homes,
Inc.*

TO: **The State Tax Commission**

FROM: **Alfred Rubinstein, Hearing Officer**

SUBJECT: **Application of Plattsburgh Mobile Homes, Inc.,
for a Hearing to Review a Determination
Assessing or Denying a Refund or Credit of
Sales and/or Use Taxes under Article 28 and/or
Article 29 of the Tax Law for Periods Ended
August 31, 1965, November 30, 1965, February 28,
1966 and May 31, 1966.**

A hearing on the above-entitled application was held before me at the office of the State Tax Commission, State Campus, Albany, New York, on June 22, 1967. The appearances and exhibits were as noted on the transcript.

The issues involved (1) assessment of compensating use taxes on purchases by the taxpayer, as a customer, of prefabricated home sections on which the taxpayer paid no sales taxes, (2) accuracy of the audit on which compensating use taxes were assessed, and (3) accuracy of the audit on which additional sales taxes, based upon the sale by the taxpayer of trailers, were assessed.

The taxpayer is engaged in sales of trailers and prefabricated homes in Plattsburgh, New York. All prefabricated homes and most trailers are installed on previously prepared plots. An occasional trailer sale is made "over the counter" where no installation is required. Trades-in are accepted on both types of sales, and financing is arranged with outside sources. The taxpayer remains contingently liable on the trailer loans only, and on default repossesses the trailers.

Prefabricated homes are installed by delivering the unassembled sections known as "spits" to the site, previously prepared in a manner identical to that where a conventional home is to be erected, with a permanent foundation or basement, and water, sewer, gas, electric and other utility installations. Instead of assembling the home, plank by plank on the site, the sections are placed on the foundation and assembled, using cement, hardware, and similar conventional building materials, and conventional heating, lighting, plumbing and other utilities in the home are connected with wires, pipes, conduit, tubing, etc. The end result is intended to be, and is, a permanent and conventional home distinguishable only by the preassembly of its sections prior to its erection.

Trailers are installed by towing the complete unit, on its own wheels, to a plot where the unit is placed on concrete blocks, connected to utility service installations in a manner so as to permit simple and easy disconnection, and removal of the wheels. Trailers are complete units, designed as rolling stock, equipped with a hitch for towing, axles and wheels, and constructed within certain limitations of width, length, height and weight, consonant with their intended use on highways. Trailers are intended to be, and are, easily and quickly removed from one site to another, and are, in fact, "mobile homes," which are often used for temporary stays while still attached to the vehicle by which they have been towed. They are primarily designed as temporary homes, although in many cases their use is of a permanent nature.

The taxpayer filed returns for the periods involved, reporting as taxable the sales of trailers where delivery was made within the State, on a net basis, after allowance for trades-in, and reported as exempt the sales of prefabricated homes. In all sales, trailers and homes, the contract price was a lump-sum gross figure that included the cost of installation which was not separately stated.

On audit of the books of the taxpayer it was ascertained (1) that on its returns the taxable sales of trailers were understated by \$23,164.40, (2) that the taxpayer's total purchases of "splits" amounted to \$47,005.50 and were all made outside of New York State; that the taxpayer paid no sales taxes to the state where purchased, nor reported such purchases as subject to New York compensating use taxes, and (3) that all materials used in the installation of both trailers and prefabricated homes were purchased either out of the State or under a resale certificate within the State. A notice of determination and demand for additional sales and use taxes in the sum of \$1,772.35 was issued on February 21, 1967 bearing No. 90,751,155, and a timely application for revision was filed on May 19, 1967. No assessment was made for sales taxes or compensating use taxes on the taxpayer's purchases of installation materials.

The taxpayer contends that the audit was inaccurate in failing to allow credit for trades-in and in computing a use tax on the sales prices of prefabricated homes instead of the cost.

The examiners testified that they had prepared their audit report (Tax Commission Exhibit "H") from the books and records of the taxpayer, including the contracts and purchase agreements which reflected credit for trade-in allowances. The taxpayer produced records of purchase and sale of two transactions involving prefabricated homes which only confirmed that the audit report had, in fact, correctly picked up the taxpayer's cost in each case as a base for the use tax and not the price paid by the customer as claimed by the taxpayer. The taxpayer declined to submit these

records as exhibits. No other records or exhibits were submitted in support of the taxpayer's contention that the audit report was inaccurate. The taxpayer offered no reason for not reporting a use tax on its purchases of "splits".

Section 1105(a) of the Tax Law imposes a sales tax on the receipts from every retail sale of tangible personal property. Section 1105(c)(3) imposes a sales tax on the receipts from sales of services in the installation of tangible personal property, exempting the installation of property which results in a capital improvement to real property. A compensating use tax is imposed by Section 1110 on the use of certain property on which a sales tax has not been paid, including tangible personal property used in capital improvements to real property.

With respect to that portion of the assessment based on sales of trailers, the taxpayer concedes that trailer sales are taxable; as to the issue of the accuracy of the audit and whether the allowances for trades-in were taken into consideration, no evidence was adduced to impeach the audit report. In fact, the examiners testified that the individual contracts and purchase agreements were examined by them, and that the taxpayer's reported total sales were accepted as accurate. The taxpayer's claim that,

On entering that in the cash journal, you would have a larger amount (page 52), is an apparent contradiction of its own contention. If cash were received as part of the consideration, assuming the trade-in to be fully exempt, such portion of the price as represented by the cash would be a smaller amount, fully taxable, and properly includible. It should be noted that the taxpayer does not question the accuracy of the audit for the quarter ended May 31, 1966, which determined that taxable sales had been overstated on its report.

The major portion of the assessment was based on the taxpayer's purchases of prefabricated "splits". The taxpayer concedes that neither sales nor use tax was paid on these materials by the vendor or vendee, and the sole question to be resolved is whether the installation of the prefabricated homes constitutes sales of tangible personal property or contracts for capital improvements to real property. The method of installation on a permanent foundation and the permanency of the water, gas, electric, sewer and other utility connections, together with the lack of mobility and the conventional house design of the prefabricated homes indicate that such installations are intended to be, and are in fact, capital improvements to real property. Whereas a trailer is specifically designed for towing by a motor vehicle, and is equipped with a hitch, axles and wheels and constructed within certain limitations of width, length, height and weight, the character of a prefabricated home is not of such mobile nature, and it is intended to, and does resemble and equal a home built on the site. Except for preassembly of the units at a factory, no ascertainable difference

exists between prefabricated homes and conventional ones. Accordingly, I am of the opinion that the lump sum contracts for sales of installed prefabricated homes are contracts for capital improvements to real property. Consequently, title to the "splits" did not pass to the customer until affixed to the land; there was no resale of the "splits" to such customers, and the ultimate sale of the "splits" as tangible personal property, at retail, was made to the taxpayer.

Accordingly, I am of the opinion that the taxpayer's receipts from sales of trailers and their installation were receipts from retail sales of tangible personal property and from services taxable under Section 1105 of the Tax Law; that the taxpayer's purchases of "splits" on which no sales tax was paid constituted the purchases of tangible personal property, at retail, subject to use tax under Section 1110 of the Tax Law; that the taxpayer's sales and purchases subject, respectively, to sales tax and compensating use tax are correctly reflected on the notice of determination for the periods stated therein, and that the determination should be sustained.

The determination of the Tax Commission should be substantially in the form submitted herewith.

/s/

ALFRED RUBINSTEIN

Hearing Officer

AR:dv

Enc.

August 27, 1968

9-17-68

IN THE MATTER OF THE APPLICATION
OF
PLATTSBURGH MOBILE HOMES, INC.
FOR A HEARING TO REVIEW A DETERMINATION
ASSESSING OR DENYING A REFUND OR CREDIT
OF SALES AND/OR USE TAXES UNDER ARTICLE
28 AND/OR 29 OF THE TAX LAW FOR THE
PERIODS ENDED AUGUST 31, 1965, NOVEMBER
30, 1965, FEBRUARY 28, 1966 AND MAY 31,
1966

The State Tax Commission hereby finds:

(1) That the taxpayer filed New York State and local sales and use tax returns reporting taxable sales of \$3,300 and sales tax of \$66 for the period ended August 31, 1963, taxable sales of \$45,330 and sales tax of \$906.60 for the period ended November 30, 1963, taxable sales of \$83,166 and sales tax of \$1,663.32 for the period ended February 28, 1964 and taxable sales of \$134,069 and sales tax of \$2,681.38 for the period ended May 31, 1964; that the taxpayer reported no purchases subject to compensating use taxes during any of the periods; that by Notice

of Determination, No. 90,751,155, dated February 21, 1967, the Sales Tax Bureau determined, after audit of the taxpayer's books and records, that compensating use taxes and additional sales taxes, penalties and interest were due in the sum of \$1,772.35 for the stated periods, on the ground that some sales of trailers and all purchases of prefabricated home sections on which taxpayer had not paid sales taxes had been omitted by the taxpayer in computing the taxes due on its returns; that the taxpayer filed a timely application for review.

(2) That during the periods involved in this application the taxpayer was engaged, at Plattsburgh, New York, in the business of selling installed prefabricated homes; that such sales were made on a lump-sum contract basis for a price which included the cost of installation on the customers' land, which cost was not separately stated; that the installation of prefabricated homes consisted of delivery of unassembled sections, known as "splits," to the site, permanently affixing the same to previously prepared foundations or basements and permanently connecting water, gas, electric, plumbing and other utility services; that the installation of prefabricated homes is, in fact and intent, of a permanent nature, the homes being designed for permanent placement as conventional dwellings.

(3) That during the periods involved in this application the taxpayer was also engaged, at Plattsburgh, New York, in the business of selling house trailers, at retail; that such sales were made on a unit price contract basis for a price which, when installation was furnished by the vendor, included the cost of installation on a site as directed by the customer, which cost was not separately stated; that the unit price contract reflected, in every case of a trade-in, an allowance for such trade-in in reduction of the purchase price.

(4) That the books and records of the taxpayer were examined and audited by the Sales Tax Bureau for the periods ended August 31, 1965, November 30, 1965, February 28, 1966 and May 31, 1966; that for such periods the taxpayer's total receipts from all sales were in the sum of \$401,921, as audited; that of such total receipts from all sales the receipts from net taxable sales of trailers, as audited, were in the sum of \$291,029.40; that the net taxable sales of trailers, as audited, reflected allowances for trailers traded-in as appears on the records of the taxpayer; that during such periods the taxpayer's receipts from sales not taxable were in the total sum of \$110,891.60 representing receipts of sales of trailers where deliveries were made without the State and receipts from contracts for erection of prefabricated homes.

(5) That during the periods ended August 31, 1965, November 30, 1965, February 28, 1966 and May 31, 1966 the taxpayer purchased unassembled sections of prefabricated homes in the total sum of \$47,005.50, as audited, which sections were used by the taxpayer in the performance of contracts for capital additions to real property; that such unassembled sections of prefabricated homes were not resold, as such; that the title to such unassembled sections of prefabricated homes did not pass to the customers of the taxpayer until they were affixed to real property as an addition thereto; that all such purchases of unassembled sections of prefabricated homes were made from vendors without the State and without payment of any sales tax by the taxpayer, who was the ultimate purchaser and customer.

(6) That the taxpayer has failed to explain or offer any legal excuse or justification for its failure to report, as a vendor, the full amount of its taxable sales of trailers, or to report, as a customer, any of its purchases of "splits" on

which no sales tax was paid and which were not for resale or otherwise exempt, and consequently, subject to the compensating use tax.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DETERMINES:

(A) That for the period commencing August 1, 1965 and ending May 31, 1966 the taxpayer's receipts from sales of trailers were in the sum of \$291,029.40 as audited and assessed; that such receipts were receipts from retail sales of tangible personal property, and subject to the sales tax imposed by section 1103(a) of the Tax Law on every retail sale of tangible personal property.

(B) That for the period commencing August 1, 1965 and ending May 31, 1966 the taxpayer purchased tangible personal property consisting of unassembled sections of prefabricated homes, not for resale, as such, and used by the taxpayer as building materials in performance of its lump-sum contracts for capital improvements to real property, in the sum of \$47,065.50, as audited and assessed; that the taxpayer paid no sales tax on such materials; that all such purchases by the taxpayer were subject to the compensating use tax imposed by section 1110(A) of the Tax Law computed on the invoice prices of such sections charged to the taxpayer by its suppliers.

(C) That, accordingly, the sales and use tax returns filed by the taxpayer for the periods ending August 31, 1965, November 30, 1965, February 28, 1966 and May 31, 1966 did not accurately reflect the taxpayer's receipts from taxable sales at retail of tangible personal property nor its purchases of tangible personal property subject to compensating use taxes; that the taxpayer failed to transmit the full amount of the sales and use taxes imposed on it by the Tax Law for such periods.

(D) That the Notice of Deficiency imposing compensating use taxes, additional sales taxes, penalties and interest on the taxpayer, for the periods ending August 31, 1963, November 30, 1963, February 28, 1966 and May 31, 1966 is correct; that the amounts set forth therein are due and owing together with additional interest, if any, and other statutory charges; that said Notice of Deficiency does not include any tax or other charge which could not have been lawfully demanded, and that the taxpayer's application for review with respect thereto be and the same is hereby denied.

Dated: Albany, New York this 19th day of September , 1968.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY
PRESIDENT

/s/

J. BRUCE MANLEY
COMMISSIONER

COMMISSIONER