

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD CARRINGTON

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ period March 26,
1970

State of New York
County of Albany

Martha Funaro , 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 16th day of May , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Richard Carrington
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Richard Carrington
469 Chenango Street
Binghamton, New York 13901
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

16th day of May , 1972.

Lynne Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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RICHARD CARRINGTON

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Tax Law for the (Year(s)) period March 26,
1970

State of New York
County of Albany

Martha Funaro 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 16th day of Mayx , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Cianciosi &
Duffy, Esqs. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Cianciosi & Duffy, Esqs.

302 Press Bldg.
Binghamton, New York 13901

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
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16th day of May , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

ADDRESS YOUR REPLY TO

Dated: Albany, New York

May 16, 1972

**Richard Carrington
469 Chenango Street
Binghamton, New York 13901**

Dear Mr. Carrington:

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

Please take further notice that pursuant to section(s)
1243 & 1138 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 Months** after the date of this notice.

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

Very truly yours,

L. Robert Leisner
L. Robert Leisner
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
RICHARD CARRINGTON : DETERMINATION
for Revision of a Determination or :
for Refund of Sales & Use Taxes under :
Articles 28 and 29 of the Tax Law for :
the Period March 26, 1970.

Richard Carrington petitioned for a refund of sales and use tax under Articles 28 and 29 of the Tax Law for the period March 26, 1970. A formal hearing was held on September 15, 1971, at the offices of the State Tax Commission at the State Office Building, Binghamton, New York. Because of the taxpayer's incapacity to stand or be ambulatory, the hearing was removed to the first floor so that he could be present with his counsel for the hearing. The taxpayer was represented by the law firm of Cianciosi & Duffy, (Leo A. Cianciosi, Esq., of Counsel) and the Sales Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Was the wheelchair purchased by the incapacitated taxpayer on March 26, 1970, exempt from New York State sales and use taxes under section 1115(a)(4) of the Tax Law?

FINDINGS OF FACT

1. Richard Carrington, the taxpayer, at all times hereinafter mentioned, had and continues to have a disease called multiple sclerosis. This has produced a functional loss. There is

extraordinary weakness in the lower extremities which prevents standing and precludes ambulation so his only means of mobility is with the use of a wheelchair.

2. The taxpayer purchased a wheelchair from the Kelly Surgical Company, Inc., Binghamton, New York, on or about March 26, 1970, on which he was compelled to pay \$19.18 sales tax.

3. The taxpayer by reason of section 1115, subdivision (a) (4) of the Tax Law timely applied for a refund of the sales tax, which was denied on May 22, 1970. Upon denial of the application for refund, the taxpayer demanded a hearing.

4. The taxpayer was at all times described herein incapable of walking. He had used the wheelchair continuously from the date of purchase through the time of the hearing.

5. The United States Department of Health, Education and Welfare Public Health Service states: "The unprescribed wheelchair is potentially as harmful and hazardous as the self-prescribed drug. It can cause trauma, secondary deformities and disabilities, and other complications that may be irreversible." Also, from the Commonwealth of Pennsylvania, the head of the Rehabilitation Services Section, Bureau of Vocational Rehabilitation, Department of Labor and Industry, in a communication, confirmed the use of prescriptions for wheelchairs for individual patients.

6. The medical evidence by George W. Sandiford, M.D., who qualified as a medical expert at the hearing, indicated the necessity of a prescription wheelchair for the taxpayer. The Broome County Medical Association confirmed the necessity of Dr. Sandiford's prescription.

7. In filling the medical prescription it was necessary to take into account exact measurements for motor deficiencies, length of legs, arms, hip and various body dimensions, weight and other variables.

8. The wheelchair was an Everest and Jennings wheelchair and carried Serial No. 821-26-774-15. While the component parts of the wheelchair were stock items, it was assembled specifically for the taxpayer. It carried special heel loops for him, among other special features. It could not be returned.

CONCLUSIONS OF LAW

A. The taxpayer's purchase of the wheelchair, his only means of mobility, was exempt from sales taxes by reason of section 1115(a)(4) of the Tax Law.

B. The denial of the refund is reversed. The taxpayer's petition is sustained and a full refund of the \$19.18 in sales tax is ordered.

C. Interest shall be added to the total amount of the refund due to the taxpayer until paid.

DATED: Albany, New York

May 16, 1972

STATE TAX COMMISSION

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Koenig

COMMISSIONER