

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NEWELL WORTHINGTON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales and Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~year(s)~~ Period(s) :  
June 19, 1973

State of New York  
County of Albany

Marsina Donnini, 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 15 day of July, 1977, she served the within  
NOTICE OF DECISION by ~~(certified)~~ mail upon Newell Worthington

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Newell Worthington  
Lockport Road  
Oakfield, New York

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

15 day of July, 1977

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
NEWELL WORTHINGTON

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June 19, 1973

State of New York  
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Marsina Donnini, 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 15 day of July, 1977, she served the within  
NOTICE OF DECISION by ~~certified~~ mail upon Raymond Cianfrini, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Raymond Cianfrini, Esq.  
50 Main Street  
Oakfield, New York 14125  
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.

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last known address of the (representative of the) petitioner.

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Marsina Donnini

Janet Mack



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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

July 15, 1977

**Newell Worthington  
Lockport Road  
Oakfield, New York**

**Dear Mr. Worthington:**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **1139 and 1243** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywat  
Hearing Examiner**

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 :  
NEWELL WORTHINGTON : 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 June 19, :  
1973.

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Applicant, Newell Worthington, Lockport Road, Oakfield, New York, 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 June 19, 1973. A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York, on September 14, 1976, at 2:45 P.M. Applicant appeared by Raymond Cianfrini, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq. of counsel).

ISSUE

Did the purchase of a mobile home constitute a capital improvement to real property, thereby entitling the applicant to a refund for sales tax paid on said purchase?

FINDINGS OF FACT

1. On June 19, 1973, applicant, Newell Worthington, purchased a mobile home from Rock Oak Estates Inc. and paid New York State and local sales tax in the sum of \$770.52.
2. Applicant, Newell Worthington, filed an application for credit or refund of state and local sales or use tax in the amount of \$770.52 on the grounds that the purchase of a mobile home was a capital improvement to real property.

3. The seller, Rock Oak Estates Inc., delivered the mobile home to real property owned by the applicant, Newell Worthington, and set the home on a foundation prepared by the applicant. The mobile home is not affixed to but rather rests on the foundation. The weight of the mobile home provides for the stability. The seller removed the running gear from the mobile home.

4. Applicant, Newell Worthington, was responsible to connect the water, electrical and sewage utility services.

5. A certificate of Capital Improvement was not issued to the seller by the applicant, Newell Worthington.

#### CONCLUSIONS OF LAW

A. That the controlling factor in determining whether the purchase of a mobile home constitutes an improvement to real property or is rather a purchase of tangible personal property is the degree of permanency with which the mobile home is affixed to the real property by the seller dealer; therefore, the delivery and mere placing of the mobile home on the applicant's foundation and the subsequent removal of the running gear by the mobile home dealer did not display that degree of permanency requisite to constitute an improvement to real property.

The element that distinguishes this matter from the matter of Francis Slocum regards the manner in which the mobile home was affixed to the real property. In the matter of Francis Slocum it was found that the home dealer joined the two sections of a

double wide mobile home and affixed the home by bolting and nailing it to a foundation plate. This method of attaching the mobile home to a foundation is similar to the method used in the on-site construction of a wood frame home and had that element of permanency necessary to constitute an improvement to real property.

B. That the purchase by the applicant, Newell Worthington, of a mobile home did constitute a purchase of tangible personal property subject to the imposition of sales tax under section 1105(a) of the Tax Law.

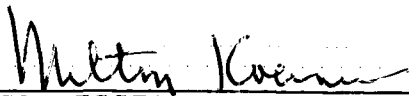
C. That the application of Newell Worthington is denied and the denial of refund issued December 17, 1974 is sustained.

DATED: Albany, New York  
July 15, 1977

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER