

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK BOURKE

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) :
September 4, 1973.

State of New York
County of Albany

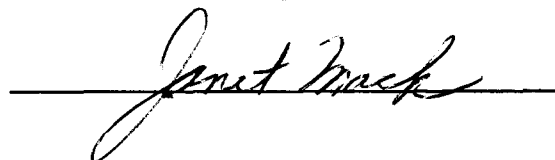
Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 22nd day of August, 1977, she served the within Notice of Determination by ~~(certified)~~ mail upon Frank Bourke ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Frank Bourke
1006 N. Main Street
Elmira, New York 14901 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

22nd day of August, 1977.


Marsina Donnini


Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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For a Redetermination of a Deficiency or :
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Tax Law for the ~~Year(s)~~ Period(s) :
September 4, 1973.

State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of August, 1977, she served the within
Notice of Determination by ~~(XXXXXX)~~ mail upon Kurt A. Franzenburg

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Kurt A. Franzenburg, Esq.
Box 172
Owego, New York 13827

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

22nd day of August, 1977.

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

August 22, 1977

Mr. Frank Bourke
1006 N. Main Street
Elmira, New York 14901

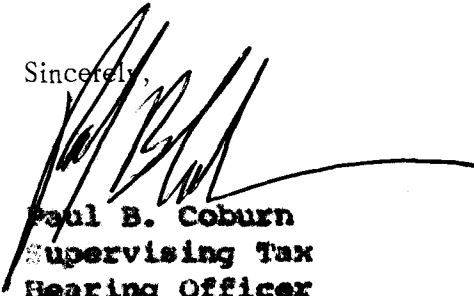
Dear Mr. Bourke:

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 & 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,


Paul B. Coburn
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Application :
of :
FRANK BOURKE :
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 September 4, 1973.

Applicant, in writing, waived a formal hearing. The case was submitted to the State Tax Commission for a decision based upon the information contained in the file.

Whether the purchase of a mobile home from a private owner was subject to sales tax, where the home was permanently installed in a mobile home park on a lot rented on a month-to-month basis.

FINDINGS OF FACT

1. The applicant, Frank Bourke, timely filed an application for refund of New York State and local sales and use taxes paid in the amount of \$390.00, for the period September 4, 1973.

2. A determination denying the refund of sales and use taxes was issued by the Sales Tax Bureau on December 28, 1973.

3. Applicant, Frank Bourke, applied for revision of the determination denying the sales and use tax refund.

4. On September 4, 1973, the applicant purchased a mobile home from a private owner. The home was located in a trailer park or mobile home park, and the lot upon which it was situated was rented from the proprietor of the park on a month-to-month basis.

5. At the time of purchase, the mobile home was not on wheels, but had been attached to a foundation which was permanent in nature. It had been connected to all utilities, i.e., fuel, electricity, telephone, water and sewers. The rented lot itself had been improved by sidewalks, a patio and fencing.

6. Applicant did not remove the home from its foundation after the purchase. He continued to rent the lot in the mobile home park on a month-to-month basis.

CONCLUSIONS OF LAW

A. That a mobile home, purchased from a private owner, which, at the time of purchase, was permanently installed in a mobile home park on a lot rented on a month-to-month basis, constitutes tangible personal property receipts from the sale of which are subject to tax within the meaning and intent of section 1105(a) of the Tax Law.

B. That the determination is sustained and the application is denied.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


RESIDENT


COMMISSIONER


COMMISSIONER