

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~Petition~~ Application

of

ROBERT and JANET ROBERSON

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

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~Year(s)~~ Period Ending :  
April, 1972.

State of New York  
County of Albany

MARY GROFF, 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 10th day of February, 1976, she served the within  
Notice of ~~Decision~~ (or Determination) by ~~(CERTIFIED)~~ mail upon ROBERT and  
JANET ROBERSON (~~representative of the~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. & Mrs. Robert Roberson  
31 Betsy Ross Drive  
Bohemia, NY

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

10th day of February, 1976.

Janet Mack

Mary Groff

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the ~~XXXXXX~~ Application

of

ROBERT and JANET ROBERSON

AFFIDAVIT OF MAILING  
OF NOTICE OF ~~XXXXXX~~ DETERMINATION  
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 & 29 of the  
Tax Law for the ~~XXXXXX~~ Period Ending:  
April, 1972.

State of New York  
County of Albany

MARY GROFF, 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 10th day of February, 1976, she served the within  
Notice of ~~XXXXXX~~ (or Determination) by ~~(certified)~~ mail upon RICHARD BORDA, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Richard Borda, Esq.  
87 West Suffolk Avenue  
Central Islip, NY 11722

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

10th day of February, 1976.

Janet Maer

Mary Groff



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

(518) 457-3850

DATED: Albany, New York  
February 10, 1976

Mr. & Mrs. Robert Roberson  
31 Betsy Ross Drive  
Bohemia, NY

Dear Mr. & Mrs. Roberson:

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

Please take further notice that pursuant to  
Section(s) **1139 & 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.

Any 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.  
These will be referred to the proper party for  
reply.

Very truly yours,

PAUL GREENBERG  
~~SECRETARY TO COMMISSION~~  
ACTING DIRECTOR  
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application	:	
of	:	
ROBERT and JANET ROBERSON	:	DETERMINATION
for a Hearing to Review a Determination	:	
of Sales and Use Taxes Due or a Denial	:	
of Credit or Refund of such taxes under	:	
Articles 28 and 29 of the Tax Law for	:	
the Period Ending April, 1972.	:	

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Robert and Janet Roberson, 31 Betsy Ross Drive, Bohemia, New York, filed an application under sections 1139 and 1250 of the Tax Law for a hearing to review a determination denying a refund of sales taxes paid under Articles 28 and 29 of the Tax Law on April 20, 1972.

Said refund claimed is for \$718.10.

A hearing was duly held on April 10, 1974, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The applicants were represented by Richard Borda, Esq. of Central Islip. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by James Scott, Esq. of counsel.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the sales tax is properly applicable to the sale of a mobile home in this case.

FINDINGS OF FACT

1. Prior to 1972 applicants resided in Deer Park, Suffolk County, New York. Since 1972 they have resided at 31 Betsy Ross Drive, Bohemia, town of Islip, Suffolk County, New York. This is a mobile home park known as Valley Forge Village owned by Valley Forge Estates, Inc. of 1400 Church Street, Bohemia. Its principal officer is a Leonard Halpern. The mobile home park is laid out with streets which are maintained by the park owner. The park now contains 164 mobile homes and three "model" homes. It is custom built.

2(a). On or about January 15, 1972, applicants entered into a contract to purchase the mobile home for the price of \$12,200.00. This price includes the cost of installation on a lot. The proposed delivery date was to be April 1, 1972.

The contract provided that if the order was not a cash transaction, the purchaser had to execute a chattel mortgage conditioned sales agreement or other such form of agreement.

The purchaser assumes all responsibility for site preparation and the seller does not guarantee proper placement unless a concrete pier, running below the frost line, has first been prepared.

The applicants made a down payment on the same date January 15, 1972. The final payment which was due before delivery was made on April 20, 1972. The mobile home was on its site when delivery was made.

2(b). Applicants executed a "security agreement (chattel mortgage)" to the Government Employees Finance & Industrial Loan Corporation, a Virginia corporation. This agreement specified that the law of the State of Virginia should govern the making and performance of this mortgage.

It also provided that the property "shall remain personal property and shall not become real property no matter how affixed thereto."

Applicants' payments were scheduled to commence on June 10, 1972.

2(c). Applicants purchased a fire insurance policy on April 25, 1972, commencing that day. This policy referred to the property as a "trailer home on continuous masonry foundation permanently located at 31 Betsy Ross Drive ...."

2(d). For local property tax purposes the applicants' mobile home is assessed separately from its site. Applicant pays the tax on the mobile home directly. The tax on the site is paid by the landlord and of course this is reflected in the rent paid by applicant.

3. Said mobile home was built by Schult Mobile Home Corporation of Elkton, Maryland.

It is 12 feet wide and 70 feet long and has a 12' by 15'4" living room and a bathroom. It is over eight tons in weight. Applicant selected the interior colors. It was built to order.

Applicants themselves have furnished a refrigerator and furniture.

4. Applicants obtained a site for their mobile home at Valley Forge Village. This was done at the time of the purchase of their mobile home.

They paid \$118 a month for the use of this lot. The lot is 50 feet by 100 feet in dimension.

The mobile home rests on concrete blocks with a metal skirting which in turn rests on a concrete slab four and one-half inches thick.

The applicants have improved their lot with a two car driveway, a 12 by 40 foot concrete patio, a garden shed on a cement slab, a rock garden and a sod lawn.

5. The mobile home is furnished with certain services through connections from the ground.

These include telephone, cable T.V., electricity from the Long Island Lighting Co., fuel oil and a sewage outlet. Gas for cooking is bottled gas.

It is also furnished with water by the park owner.

6. Applicants have removed the tractor hookup and the tires from their mobile home. The sales brochure from which they selected the home and similar material, contains only slight reference to the undermarriage or method of transporting the mobile home.

7. The costs of moving a mobile home is estimated to be from \$2.50 to \$5.00 a mile.

8. Applicants at all times intended to leave the mobile home in the mobile home park. If sold, the home would be sold on its site.

9. In Suffolk County, Nassau County and New York City, all mobile homes must be placed in mobile home parks and not elsewhere because of local zoning restrictions. Furthermore, there are no mobile home parks in this area which will allow a mobile home to be placed therein without having been purchased or rented from the proprietor who also owns the park. These are closed mobile home parks.

#### CONCLUSIONS OF LAW

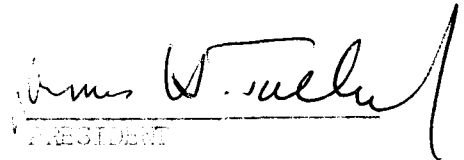
A. A mobile home, prior to its being placed on a permanent site, is personal property and not real property.

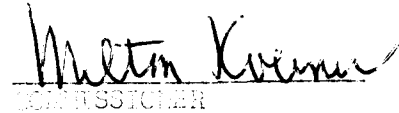
D. The applicants herein purchased persons' property in the form of a mobile home.

E. The determination under review is correct and the application is denied.

DATED: Albany, New York  
February 10, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER