

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

UNIVERSITY HEMPSTEAD CORPORATION

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Sales & Use
Taxes under Article(s) 28 & 29 of the
Tax Law for the ~~Year(s)~~ Period(s)
May 1972

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 21st day of December, 1976, he served the within
Notice of Determination by ~~(certified)~~ mail upon University Hempstead
Corporation (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: University Hempstead Corporation
590 Fulton Avenue
Hempstead, N.Y.

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

21st day of December, 1976

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **457-3850**

December 21, 1976

University Hempstead Corporation
590 Fulton Avenue
Hempstead, N.Y.

Gentlemen:

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

Please take further notice that pursuant to
Section(s) **1138 & 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.

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. They
will be referred to the proper party for reply.

Very truly yours,
Frank J. Puccio
Frank Puccio
Supervisor of
Small Claims Hearings

Enc.

cc: ~~Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
UNIVERSITY HEMPSTEAD CORPORATION : DETERMINATION
for a Revision of a Determination or for Refund :
of Sales and Use Taxes under Articles 28 and 29 :
of the Tax Law for the Period May, 1972. :

Applicant, University Hempstead Corporation, 590 Fulton Avenue, Hempstead, New York, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period May, 1972 (Claim No. 6660). A small claims hearing was held before Joseph Marcus, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, Room 6531, New York, New York on July 13, 1976 at 9:15 a.m. Applicant was represented by Abraham Gelber, officer and Wallace Klughers, area representative. The Sales Tax Bureau was represented by Peter Crotty, Esq., (Frank Levitt, Esq., of counsel).

ISSUE

Does the installation of wall-to-wall carpeting over existing carpeting constitute a capital improvement to real property or a sale of tangible personal property which remains personal property?

FINDINGS OF FACT

1. Applicant, University Hempstead Corporation, timely filed an application for credit or refund of New York State and Local sales and use taxes on November 30, 1972 which was received by the refund unit of the Sales Tax Bureau on December 15, 1972, (Claim No. 6660).

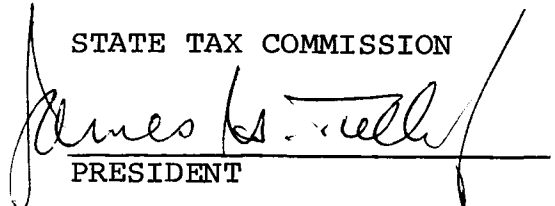
2. Applicant owns an apartment building in Hempstead, New York. In 1972, the applicant installed new wall-to-wall carpeting in the hallways. By its own election the applicant chose to have the new carpeting installed over the existing carpeting which was quite worn. Had the applicant removed the old carpeting which was installed over a sub-floor, a sub-floor that was not usable without adding hardwood flooring or some other type of floor covering, he would have been compelled to add an underlayment at additional cost to the applicant. By installing the new carpeting directly over the old carpeting considerable economies were realized by the applicant.

CONCLUSIONS OF LAW

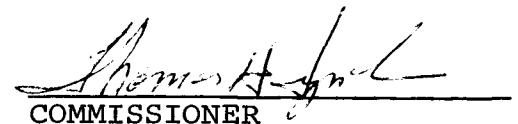
A. That the installation of new carpeting over the old carpeting constituted the installation of tangible personal property which was not incorporated into the structure and which retained its identity as tangible personal property, in accordance with the meaning and intent of section 1105(a) and (c) (5) of the Tax Law.

B. The taxpayer's application for sales tax refund is denied.

DATED: Albany, New York
December 21, 1976

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER