

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIEGMUND HOMES INC.

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) or Period(s) :
11/10/72 through 5/29/73.

State of New York
County of Albany

Janet Mack , 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 1st day of October , 1976, she served the within
Notice of Determination by (~~certified~~) mail upon Siegmund Homes Inc.

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Siegmund Homes Inc.
Route 24
Hampton Bays, 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 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

1st day of October , 1976.

Mary Giff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

October 1, 1976

TELEPHONE: (518) 457-3850

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Siegmond Homes Inc.
Route 24
Hampton Bays, NY

Gentlemen:

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

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

Enc.

Frank J. Puccia
Supervisor of
Small Claims Hearings
cc: ~~Petitioner's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
SIEGMUND HOMES INC.	:	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 November 10, 1972 through	:	
May 29, 1973.	:	

Applicant, Siegmund Homes Inc., Route 24, Hampton Bays, 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 November 10, 1972 through May 29, 1973.

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 11, 1976, at 1:15 P.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUE

Are the purchases by the applicant of materials used in the performance of a capital improvement contract, to which an addendum stipulating that title to materials will vest in the owner, an exempt organization, subject to sales tax?

FINDINGS OF FACT

1. Applicant, Siegmund Homes, Inc. filed an application for credit or refund of state and local sales or use tax in the amount of \$984.08 dated August 6, 1973.

2. As a result of an informal conference, the Sales Tax Bureau in correspondence dated January 16, 1974 recommended the refund be granted, but only to the extent of \$186.96.

3. Applicant, Siegmund Homes Inc., entered into an agreement with the Diocese of Long Island on September 28, 1972, to furnish and install materials required for the erection of a dwelling for the lump sum price of \$41,872.00. There were no sales tax provisions contained in the agreement. An addendum to the contract was signed on February 12, 1973 setting forth a separate price for labor and materials, and transferring title of such material to the owner prior to the incorporation of these materials into the project.

4. An Exempt Organization Certificate dated February 12, 1973 was obtained by the applicant from the Diocese of Long Island.

5. Applicant, Siegmund Homes Inc., paid a sales tax on the materials incorporated into the Diocese of Long Island project.

CONCLUSIONS OF LAW

A. That the materials purchased prior to February 12, 1973 were used in the performance of a lump sum capital improvement contract for the Diocese of Long Island, and constitute taxable

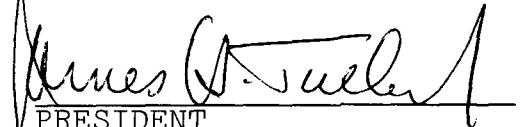
retail sales within the meaning and intent of sections 1101(b)(4) and 1105(a) of the Tax Law, and are not afforded the exemption as provided in section 1115(a)(15). (As added by L. 1969 CH.473; as amended by L. 1971, CH. 2221.).

B. That the purchase of materials on and subsequent to February 12, 1973 used in the construction of the dwelling for the Diocese of Long Island are exempt from the sales and use taxes as provided for in section 1115(a)(15).

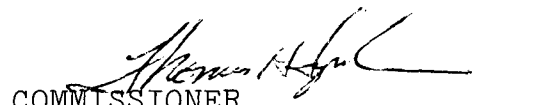
C. That the application of Siegmund Homes Inc. is granted to the extent that the sales tax paid on materials purchased, on and after February 12, 1973 be refunded in accordance with section 1139 of the Tax Law. That the Sales Tax Bureau is hereby directed to accordingly refund the state and local sales or use tax paid on materials purchased on and after February 12, 1973; and that except as so granted, the application is in all other respects denied.

DATED: Albany, New York
October 1, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER