

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BROADWAY MOBILE HOMES SALES CORP.

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) :
9/1/71 - 8/31/74

State of New York
County of Albany

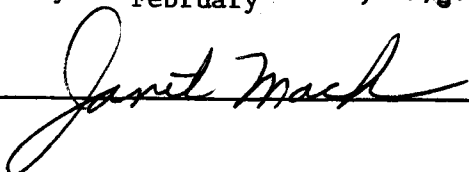
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978 , she served the within
Notice of Determination by ~~XXXXXXXXXX~~ mail upon Broadway Mobile Homes
Sales Corp. ~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Broadway Mobile Home Sales Corp.
600 North Broadway
Amityville, NY 11701

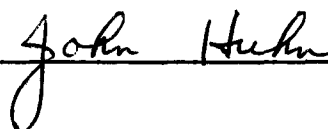
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

14th day of February , 1978.







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

February 14, 1978

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

Broadway Mobile Home Sales Corp.
600 North Broadway
Amityville, NY 11701

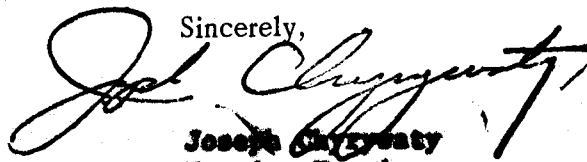
Gentlemen:

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) ~~1138 & 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 Chrygasty
Hearing Examiner

~~cc: Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
BROADWAY MOBILE HOMES SALES CORP.	:	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 1, 1971 through August 31,	:	
1974.	:	
	:	

Applicant, Broadway Mobile Homes Sales Corp., 600 North Broadway, Amityville, New York 11701, 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 September 1, 1971 through August 31, 1974 (File No. 10451).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 31, 1977 at 2:45 P.M. Applicant appeared by Benjamin Block, president of Broadway Mobile Homes Sales Corp. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the sales of used mobile homes located on real property not owned by the purchaser and provided with utility hook-ups, were subject to sales tax.

FINDINGS OF FACT

1. The Sales Tax Bureau conducted an audit of applicant's books and records for the period September 1, 1971 through August 31, 1974. As a result of the audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant on January 7, 1975 in the amount of \$24,766.47, plus penalty and interest, upon the grounds that the sales of used mobile homes were subject to sales tax in accordance with the meaning and intent of section 1105(a) of the Tax Law.

2. Applicant is in the business of selling new and used mobile homes. The used mobile homes sold by the applicant were located on real property owned by Gildersleeve Park for Mobile Homes, Inc., a corporation with the same ownership as the applicant. The used mobile homes were provided with utility hook-ups when sold. It was the sales of these used mobile homes which the Sales Tax Bureau held to be taxable.

3. Applicant protested the aforesaid assessment upon the grounds that the used mobile homes at issue were real property and, therefore, exempt from the sales tax.

4. The purchasers of the used mobile homes at issue did not own the land to which said mobile homes were affixed, but leased or rented said land from Gildersleeve Park for Mobile Homes, Inc. on a month-to-month basis.

5. The assessed valuation of the land owned by Gildersleeve Park for Mobile Homes, Inc. was increased due to the affixation of the used mobile homes at issue.

6. The owners of the used mobile homes at issue generally have not been assessed directly for property and school taxes by the Town of Babylon. However, in situations where owners of a used mobile home were eligible for partial exemption from said taxes, they were billed directly by the Town of Babylon and were given a credit against the monthly rental payments due.

7. The used mobile homes at issue could have been removed from the mobile park by the owners and transported elsewhere, although that was not the general policy.

CONCLUSIONS OF LAW

A. That the used mobile homes sold by the applicant, are not deemed to be real property since they were not permanently affixed to real property.

B. That the used mobile homes were tangible personal property as defined by section 1101(b)(6) of the Tax Law.

C. That the used mobile homes were subject to sales tax pursuant to section 1105(a) of the Tax Law.

D. That the Sales Tax Bureau properly assessed applicant for the sales tax on its sales of used mobile homes.

E. That the application of Broadway Mobile Homes Sales Corp. is granted to the extent that the penalty is waived; that the Sales Tax Bureau is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued

January 7, 1975; and that, except as so granted, the application is in all other respects denied.

DATED: Albany, New York
February 14, 1978

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER