

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROLLAND A. TROMBLEE, JR.

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 and 29 of the :
Tax Law for the ~~year(s)~~ Period(s) :
July 10, 1974.

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 13th day of December , 1978, ~~she~~ served the within
Notice of Determination by (~~registered~~) mail upon Rolland A. Tromblee, Jr.

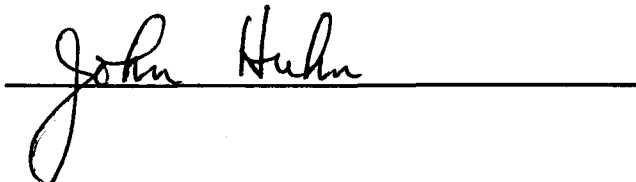
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Rolland A. Tromblee, Jr.
Hallock Hill Road
Peru, New York 12972

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~~
~~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

13th day of December , 1978





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

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

December 13, 1978

**Mr. Rolland A. Tromblee, Jr.
Hallock Hill Road
Peru, New York 12972**

Dear Mr. Tromblee:

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,


**Joseph Chyrywat
Hearing Examiner**

cc: ~~Primary Taxpayer~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
ROLLAND A. TROMBLEE, JR.	:	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 July 10, 1974.	:	

Applicant, Rolland A. Tromblee, Jr., Hallock Hill Road, Peru, New York 12972, 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 July 10, 1974 (File No. 10363).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York on July 29, 1977 at 9:15 A.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether the purchase of a double-wide mobile home constituted a capital improvement to real property and entitled applicant to a refund of sales tax paid on said purchase.

FINDINGS OF FACT

1. On July 10, 1974, applicant, Rolland A. Tromblee, Jr., filed an Application for Credit or Refund of State and Local Sales or Use Tax in the amount of \$700.00. The amount alleged due by the applicant was for sales tax paid on the purchase of a double-wide mobile home which he contended was permanently affixed to real property.

2. The refund was denied on March 17, 1975 by the Sales Tax Bureau, on the grounds that no portion of the slab upon which the mobile home was installed extended below the frost line. Also, since the vendor alone did not fully affix the home to the realty, it was the Sales Tax Bureau's contention that applicant purchased tangible personal property.

3. The home in question was a double-wide mobile unit with dimensions of 24' X 48'. The slab on which the mobile home was placed was poured and leveled by applicant. All connections for electric service, water and sewer lines were installed by applicant and brought in under the slab. The vendor of the mobile home then delivered and placed the mobile home on top of cinder blocks placed between the mobile home and the slab but no mortar was applied. The wheels and the hitch were removed by the vendor. Applicant installed a concrete block wall with mortar beneath the perimeter of the home to secure it on the foundation of cinder blocks.

4. Since his application for refund, applicant has placed fill around the wall causing the slab to be below the frost line.

5. Applicant contended that the mobile home was purchased with the intention of making it permanent and that the vendor was aware of that intention. In fact, applicant claimed he was advised by the vendor that the procedure to follow in such a case was to pay the sales tax and apply for a refund once the home had been permanently attached to the realty.

CONCLUSIONS OF LAW

A. That the mobile home purchased by Rolland A. Tromblee, Jr. was not permanently affixed to the realty by the vendor. Vendor's delivery and placing of the mobile home on applicant's foundation and the subsequent removal of the running gear was not sufficient to display that degree of permanence required of a capital improvement to real property.

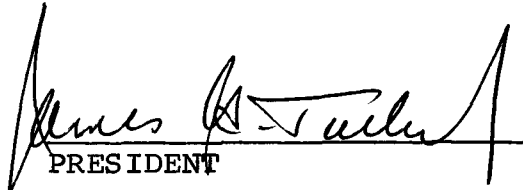
B. That the purchase by applicant of a mobile home which was not permanently affixed to the realty by the vendor constitutes tangible personal property subject to the imposition of sales tax under section 1105(a) of the Tax Law.

C. That the application of Rolland A. Tromblee, Jr. is denied and the denial of refund issued March 17, 1975 is sustained.

DATED: Albany, New York

December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER