

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Burris C. & Gloria Stackhouse :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 of the Tax Law  
for the Period 11/25/74. :

State of New York  
County of Albany

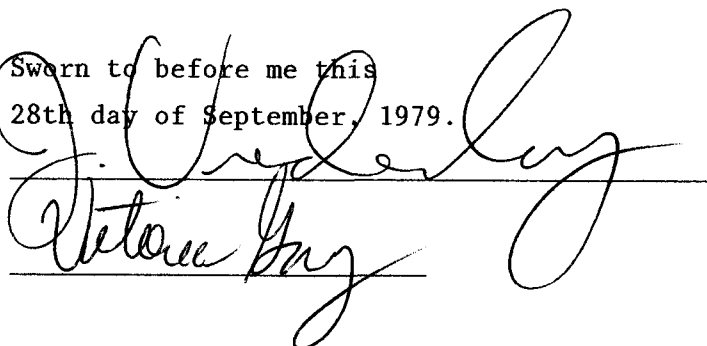
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Determination by mail upon Burris C. & Gloria Stackhouse, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Burris C. & Gloria Stackhouse  
47 Springwood Path  
Laurel Hollow, NY 11791

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
28th day of September, 1979.

  
\_\_\_\_\_  
Victoria Gay

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Burris C. & Gloria Stackhouse  
47 Springwood Path  
Laurel Hollow, NY 11791

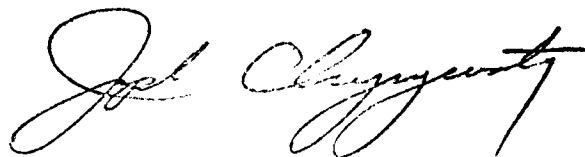
Dear Mr. & Mrs. Stackhouse:

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,

A handwritten signature in dark ink, appearing to read "John J. Sollecito", written in a cursive style.

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :

BURRIS C. STACKHOUSE and GLORIA STACKHOUSE : 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 25, :  
1974.

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Applicants, Burris C. and Gloria Stackhouse, 47 Springwood Path, Laurel Hollow, New York 11791, 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 25, 1974 (File No. 18343).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1978 at 2:45 P.M. Applicants appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether applicants paid sales tax on the purchase of a capital improvement.

FINDINGS OF FACT

1. On November 25, 1974, applicants, Burris C. and Gloria Stackhouse, filed an Application for Credit or Refund of State and Local Sales or Use Tax (ST-137) in the amount of \$1,116.00. This

amount represented the tax collected on two invoices from Capp Homes. Applicants claimed that the sales tax was improperly collected by the contractor, Capp Homes, since they supplied both labor and materials for the construction of applicants' home.

2. The Sales Tax Bureau denied applicants' refund claim on November 29, 1976. The Sales Tax Bureau contended that the tax imposed by Capp Homes was correct because it represented a) the tax on materials which were sold but not installed, and b) a reimbursement of tax to the contractor on the cost of materials which were installed by him.

3. In August of 1973, applicants entered into an agreement with Capp Homes. The agreement stated that "The seller agrees to draw and furnish plans for the improvement of said premises, and to furnish the Buyer a Capp-Home... delivered and erected on buyer's lot and foundation... furnishing all materials and labor as shown on Pages 44 and 45 of the seller's catalog." Applicants' agreement with Capp Homes included the labor and materials for the construction of the exterior shell, interior partitions, and installation of the windows and exterior doors. The interior finishing materials, such as kitchen and bath cabinets, insulation, sheetrock, doors, and trim were also included, but were not installed by Capp Homes. For an additional cost, Capp Homes provided labor for roofing and siding.

4. On August 10, 1973, Capp Homes issued an invoice pursuant to the above agreement for \$27,377.00, plus sales tax of \$1,064.00, for a total of \$28,441.00. The invoice also stated that the price included roofing, siding and soffits totalling \$2,079.00. The contract breakdown sheet showed that this amount represented labor only.

5. On September 4, 1973, Capp Homes issued a second invoice for \$1,046.00, plus sales tax of \$52.00. This invoice was for labor and materials for installing plywood sheathing, aluminum soffits, fascia and window trim, which were not included in the original agreement.

6. Western Mortgage Service Company financed \$25,000.00 of the purchase price. The balance was paid in cash by applicants.

7. Capp Homes collected a sales tax based on approximately 60% of the purchase price.

8. Materials which were included in the purchase price which were not installed by Capp Homes were insulation, sheetrock, a garage door and kitchen cabinets. The cost of these materials was approximately \$4,000.00. Applicant conceded that tax was due at the rate of 7% on these uninstalled materials. Applicant sent letters to Capp Homes requesting the actual dollar amount of uninstalled materials, but received no response.

9. Applicants issued a Certificate of Capital Improvement to Capp Homes on November 15, 1973.

#### CONCLUSIONS OF LAW

A. That the contractual agreement between applicants and Capp Homes constituted a capital improvement to real property; therefore, it is not subject to tax. However, the contract amount did include the sale of tangible personal property in the amount of \$4,000.00, which was not an integral component part of the real property at the time of the sale; therefore, said amount is subject to tax, within the meaning and intent of sections 1101(B)(4)(i) and 1105(a) of the Tax Law.

B. That the application of Burris C. and Gloria Stackhouse is granted to the extent of reducing the refund from \$1,116.00 to \$836.00; that the Sales Tax Bureau is hereby directed to refund said sum; and that, except as so granted, the application is in all other respects denied.

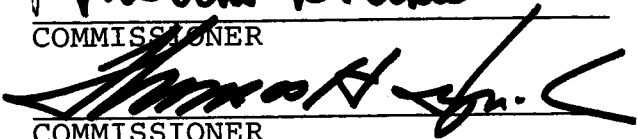
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER