

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

:

of

MORRIS RUMANER d/b/a MOREY'S ROBO CAR WASH (Seller) AFFIDAVIT OF MAILING
and STEPHEN J. AND DOROTHY V. HANZLIK (Purchasers)

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 ~~XXXXXX~~ Period ~~(X)~~ :
March 1, 1972 through September 30,
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 14th day of February , 1979, ~~she~~ served the within
Notice of Determination by ~~XXXXXX~~ mail upon Morris Rumaner
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Morris Rumaner
914 Nottingham Road
Jamesville, NY 13078

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

Sworn to before me this

14th day of February , 1979.

Marilyn J. Papirian

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS RUMANER d/b/a MOREY'S ROBO CAR WASH (Seller) AFFIDAVIT OF MAILING
and STEPHEN J. AND DOROTHY V. HANZLIK (Purchasers)

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) :
March 1, 1972 through September 30, 1974.

State of New York
County of Albany

John Huhn , 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 14th day of February , 1979 , he served the within
Notice of Determination by ~~(certified)~~ mail upon Stephen J. and Dorothy V.
Hanzlik ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Stephen J. and Dorothy V. Hanzlik
7186 Rosewood Circle
North Syracuse, NY 13212

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)~~ petitioner.

Sworn to before me this

14th day of February , 1979.

Maureen J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MORRIS RUMANER d/b/a MOREY'S ROBO CAR WASH (Seller) AFFIDAVIT OF MAILING
and STEPHEN J. AND DOROTHY V. HANZLIK (Purchasers)

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 ~~XXXXXX~~ Period ~~(xx)~~ :
March 1, 1972 through September 30,
1974.

State of New York
County of Albany

John Huhn , 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 14th day of February , 1979, he served the within
Notice of Determination by ~~(certified)~~ mail upon Alfred J. Moorhead, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Alfred J. Moorhead, Esq.
2601 Lodi Street
Syracuse, NY 13208

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

14th day of February , 1979

Marilyn J. Papineau

John Huhn



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

February 14, 1979

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

**Morris Rumaner
914 Nottingham Road
Jamesville, NY 13078**

Dear Mr. Rumaner:

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 Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MORRIS RUMANER	:	DETERMINATION
d/b/a MOREY'S ROBO CAR WASH (Seller)	:	
and	:	
STEPHEN J. AND DOROTHY V. HANZLIK	:	
(Purchasers)	:	
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 March 1, 1972 through	:	
September 30, 1974.	:	

Applicants, Morris Rumaner, 914 Nottingham Road, Jamesville, New York, and Stephen J. and Dorothy V. Hanzlik, 3916 Brewerton Road, North Syracuse, New York, 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 March 1, 1972 through September 30, 1974 (File No. 14538).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 333 East Washington Street, Syracuse, New York, on July 26, 1977 at 9:15 A.M. Applicants appeared by Alfred J. Moorhead, Esq. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether the entire amount of the monthly payments made by applicant Morris Rumaner to West-Ro (a limited partnership) was for the lease of tangible personal property.

FINDINGS OF FACT

1. Applicant Morris Rumaner was the owner of Morey's Robo Car Wash located at 1505 Erie Boulevard East, Syracuse, New York. On September 25, 1974, Morris Rumaner executed an agreement to sell his interest in said business to Stephen J. and Dorothy V. Hanzlik. The actual sale took place on October 17, 1974. A Notification of Sale, Transfer or Assignment in Bulk (ST-274) was sent to the Sales Tax Bureau by the purchaser on November 13, 1974.

2. As a result of the aforementioned notification, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against applicant Morris Rumaner on April 16, 1975 for taxes due of \$7,000.00, plus penalty and interest. At the same time, a Notice and Demand for Payment of Sales and Use Taxes Due was issued against Stephen J. and Dorothy V. Hanzlik, purchasers, in the same amount.

3. Applicants timely filed applications for a hearing to review the above notices.

4. At an informal conference held in the Syracuse District Office on July 30, 1975, it was determined that an audit of applicant Morris Rumaner's books and records was necessary to determine

the correct tax liability. As a result of the audit, the tax assessed was reduced from \$7,000.00 to \$2,125.62. On audit, applicant Morris Rumaner was held liable for tax on monthly payments to West-Ro, which the Sales Tax Bureau determined to be for the lease of car wash equipment.

5. On March 23, 1976, the Sales Tax Bureau issued a Notice of Assessment Review (ST-574.4) to both applicants, revising the previous notices in accordance with the audit findings.

6. A contract titled "Lease Agreement" was executed on January 22, 1969 between West-Ro (a limited partnership), lessor, and applicant Morris Rumaner, lessee. The agreement stated that "The personal property hereby leased...is described as follows: One (1) 2-Bay Robo Automatic Car Wash Equipment Package, complete and installed on location \$63,000.00." The agreement was for a period of ninety-six months, which provided for sixty (60) monthly payments of \$1,008.00, commencing on September 1, 1969 and thirty-six monthly payments of \$126.00. The agreement also provided that "All of said equipment shall remain personal property regardless of the degree or manner of its attachment to realty, and title thereto shall remain exclusively in Lessor...".

7. The car wash equipment was purchased by West-Ro for \$34,835.70 and shipped to applicant for installation. Applicant arranged for the installation of the equipment on land he leased from Louis J. Kassel. West-Ro reimbursed applicant for the cost of installation. The land lease agreement with Louis J. Kassel was

for a ten (10) year period with a clause which provided applicant with the privilege to extend the lease for two (2) successive five (5) year periods.

8. Applicants contended that a portion of the equipment when installed became real property and that part of the monthly payment was for the lease of real property; therefore, it was not subject to tax.

CONCLUSIONS OF LAW

A. That the lease agreement between West-Ro and applicant Morris Rumaner specifically identified the equipment as personal property, regardless of the degree to or manner in which it was attached to the realty. That title to the equipment remained with the lessor for the duration of the lease.

B. That monthly payments made by applicant to West-Ro were for the lease of tangible personal property subject to tax, pursuant to section 1105(a) of the Tax Law.

C. That the applications of Morris Rumaner and Stephen J. and Dorothy V. Hanzlik are denied and the notices issued April 16, 1975 are sustained.

DATED: Albany, New York
February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER