

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

STEPHEN J. KOSEBA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Sales & Use :  
Taxes under Article(s) 28 & 29 of the :  
Tax Law for the ~~XXXXXX~~ Period ~~(s)~~ :  
July 1, 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 4th day of May, 19 79, ~~He~~ served the within  
Notice of Determination by ~~(XXXXXX)~~ mail upon Stephen J. Koseba

~~XXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Stephen J. Koseba  
RD #1  
Bradford, NY 14815

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~~ of the 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

4th day of May, 19 79

Marilyn J. Papineau

John Huhn



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

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

May 4, 1979

Stephen J. Koseba  
RD #1  
Bradford, NY 14815

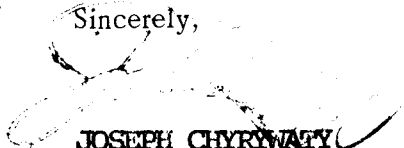
Dear Mr. Koseba:

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 CHYRWATY  
HEARING EXAMINER

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~  
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  
STEPHEN J. KOSEBA  
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 1, 1974.

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DETERMINATION

Applicant, Stephen J. Koseba, RD #1, Bradford, New York 14815, 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 1, 1974 (File No. 01897).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 44 Hawley Street, Binghamton, New York, on September 26, 1978 at 10:45 A.M. Applicant appeared pro se. The Sales Tax Bureau appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

#### ISSUE

Whether applicant's purchase of a mobile home constituted a capital improvement to real property, thereby entitling applicant to a refund of the sales tax paid on said purchase.

#### FINDINGS OF FACT

1. On July 1, 1974, applicant, Stephen J. Koseba, purchased a 70' x 14' mobile home from Hall's Mobile Home Agency, Inc. for \$13,000.00 and paid sales tax of \$910.00, based on the purchase price.

2. On August 13, 1974, applicant filed an Application for Credit or Refund of State and Local Sales or Use Tax (Form ST-137) for \$860.56. Applicant claimed that the mobile home was permanently installed on his property and, thus, constituted a capital improvement to real property.

Applicant agreed that tax was owing on furniture valued at \$706.23 (which was included in the purchase price) and he excluded the tax due thereon when preparing the refund claim.

3. On November 26, 1974, the Sales Tax Bureau denied the refund claim in full, on the grounds that applicant purchased tangible personal property, rather than a capital improvement.

4. The dealer, Hall's Mobile Home Agency, Inc., delivered the mobile home to land owned by applicant and placed it on a foundation. The foundation consisted of concrete block piers which were 2 course high and were set approximately 3 feet apart. The piers were on a gravel base partially below ground level.

The mobile home was not permanently affixed to the foundation by the dealer. The dealer secured it to the land by means of "hurricane strapping," which is required by law in that part of New York State. Hurricane strapping is metal strapping located between the interior and exterior walls and protrudes from underneath the mobile home. The strapping is placed into the ground by using an auger. This is done to stabilize the mobile home during adverse weather conditions:

5. Applicant removed the running gear from the mobile home and also hooked up the sewer, water and other utility services.

Pursuant to an oral agreement with the dealer, applicant agreed to perform the installation services in return for a discount in the purchase price.

6. Applicant contended that he acted as a subcontractor for the dealer when performing the installation services and that as a result, the dealer was actually responsible for the entire installation.

7. Applicant also contended that the mobile home is taxed as real property and, thus, cannot be taxed as personal property.

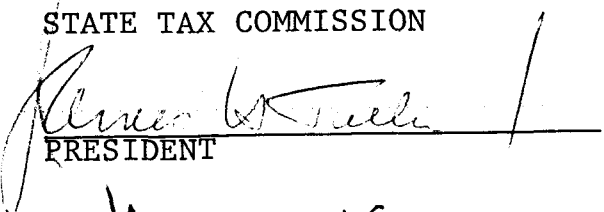
CONCLUSIONS OF LAW


A. That the dealer did not affix the mobile home to applicant's real property with the degree of permanency required to constitute a capital improvement to real property. Applicant purchased tangible personal property subject to sales tax under section 1105(a) of the Tax Law (Matter of Newell Worthington, State Tax Commission decision dated July 15, 1977).

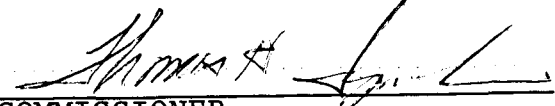
B. That the application of Stephen J. Koseba is denied and the refund denial issued November 26, 1974 is sustained.

DATED: Albany, New York  
May 4, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER