

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Edward R. Murphy :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Sales & Use Tax :
under Article 28 & 29 of the Tax Law
for the Period 6/16/72. :

AFFIDAVIT OF MAILING

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 22nd day of February, 1980, he served the within notice of Determination by mail upon Edward R. Murphy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward R. Murphy
RD #2, Box 363
Broadalbin, NY 12025

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
22nd day of February, 1980.

Joanne Knapp

J. Vredenburg

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

February 22, 1980

Edward R. Murphy
RD #2, Box 363
Broadalbin, NY 12025

Dear Mr. Murphy:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
EDWARD R. MURPHY	:	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 June 16, 1972.	:	

Applicant, Edward R. Murphy, RD#2, Box 363, Broadalbin, New York 12025, 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 June 16, 1972 (File No. 12842).

On February 12, 1979, applicant advised the State Tax Commission, in writing, of his desire to waive a small claims hearing and to submit the case to the State Tax Commission on the evidence contained in the file. After due consideration of said record, the State Tax Commission renders the following determination.

ISSUE

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

FINDINGS OF FACT

1. On June 16, 1972, applicant, Edward R. Murphy, purchased a mobile home from Northern Pines Park & Sales, Inc. and paid New York State sales tax of \$232.00.

2. On June 26, 1975, applicant filed an Application for Credit or Refund

of State and Local Sales or Use Tax of \$232.00 contending that the purchase of the mobile home constituted a capital improvement to real property.

3. The refund was denied by the Sales Tax Bureau on October 7, 1975, on the grounds that the mobile home purchased did not meet fully the qualifications as set forth by the New York State Sales Tax Bureau. More specifically, the Sales Tax Bureau's denial was based on the fact that some portion of the permanent foundation must extend below the frost line.

4. Applicant made a timely application for a revision of the denial of his refund claim.

5. The mobile home was delivered to applicant in June, 1972, and was placed on a permanent concrete slab approximately eight inches thick on applicant's land. All running gear was removed and utilities hooked up by the vendor, Northern Pines Park & Sales, Inc.

6. Applicant, Edward R. Murphy, contends that the depth of the foundation has no bearing with the intent of the owner to make his dwelling permanently affixed to the property.

CONCLUSIONS OF LAW

A. That the controlling factor in determining whether the purchase of a mobile home constitutes an improvement to real property or is rather a purchase of tangible personal property is the degree of permanency with which the mobile home is affixed to the real property by the dealer; therefore, the delivery and mere placing of the mobile home on the applicant's foundation and the subsequent removal of the running gear by the mobile home dealer did not display that degree of permanency requisite to constitute an improvement to real property.

An improvement to real property is where the mobile home dealer affixes the home by bolting and nailing it to a foundation plate. This method

of attaching the mobile home to a foundation is similar to the method used in the on-site construction of a wood frame home and has that element of permanency necessary to constitute an improvement to real property.

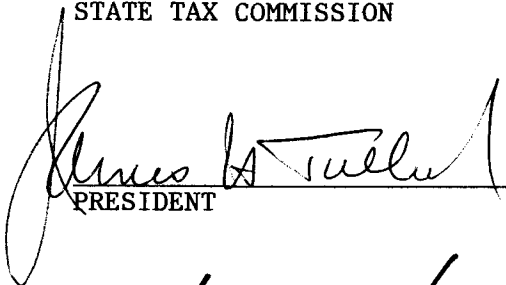
B. That the purchase of the mobile home by the applicant, Edward R. Murphy, did constitute a purchase of tangible personal property subject to sales tax under section 1105(a) of the Tax Law.

C. That the application of Edward R. Murphy is denied and the denial of refund is sustained.

DATED: Albany, New York

FEB 22 1980

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER

COMMISSIONER