

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Thomas Lee Wollschleger :

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 Year 1974. :

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 28th day of November, 1980, he served the within notice of Decision by mail upon Thomas Lee Wollschleger, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas Lee Wollschleger
20 E. Main St.
Holcomb, NY 14469

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 November, 1980.

Dorothy A. Bank



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

November 28, 1980

Thomas Lee Wollschleger
20 E. Main St.
Holcomb, NY 14469

Dear Mr. Wollschleger:

Please take notice of the Decision 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:

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 Petition :
of :
THOMAS LEE WOLLSCHLEGER : DECISION
for Revision of a Determination or for Refund :
of Sales and Use Taxes under Articles 28 and 29 :
of the Tax Law for the Year 1974. :

Petitioner, Thomas Lee Wollschleger, 20 East Main Street, Holcomb, New York 14469, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the year 1974 (File No. 17218).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on June 10, 1980 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioner's purchase of an above ground swimming pool constituted a capital improvement to real property, thereby entitling petitioner to a refund of the sales tax paid on said purchase.

FINDINGS OF FACT

1. On June 1, 1975, petitioner, Thomas Lee Wollschleger, filed an application for a refund of \$224.00 for sales taxes which were paid to Kayak Recreational Manufacturing Corp. on the purchase of an above ground swimming pool. Said refund was claimed on the basis that the addition of the swimming pool on petitioner's land increased his assessed valuation \$500.00 and thus was a capital improvement to real property.

2. On August 18, 1975, the Sales Tax Bureau denied the refund claim on the grounds that the swimming pool remained tangible personal property after its installation and, therefore, was subject to tax.

3. On April 22, 1974, petitioner entered into an agreement with Kayak Recreational Manufacturing Corp. for the purchase and installation of a 16' x 24' above-ground swimming pool for a total price of \$3,200.00 plus sales tax thereon of \$224.00.

4. The swimming pool was erected resting on a bed of sand 6 inches below ground level. It consisted of a vinyl liner with aluminum supports and side panels. The swimming area is surrounded by vinyl laminated marine decking and a fiberglass privacy fence. The pool was constructed with a bottom center drain, the plumbing for which was placed below frost level, and is connected to the filtration system. There is also a surface skimmer to remove floating debris. The electrical hook up to the pool is underground. The depth of the pool was approximately 4 feet.

5. After the pool was erected, petitioner placed 1500 pounds of marble on the ground around the pool, constructed a patio and planted shrubbery. Petitioner testified that the swimming pool could be dismantled and installed at another location for \$300.00. However, petitioner argued that such removal would substantially reduce the value and appearance of his real property.

6. In 1975, the Town of Holcomb increased petitioner's real property assessed valuation by \$500.00 due to the erection of the swimming pool.

CONCLUSIONS OF LAW

A. That the above ground swimming pool purchased by petitioner was not affixed to the real property with the degree of permanency required to constitute a capital improvement to real property. That said installation did not prolong

the useful life of the land nor would its removal cause material damage to the pool itself or the real property. Petitioner purchased tangible personal property subject to the sales tax imposed under section 1105(a) of the Tax Law.

B. That although the Town of Holcomb classified petitioner's swimming pool as real property for real estate tax purposes, such classification cannot determine the status of a swimming pool under the Sales Tax Law. Matter of Roberson v. State Tax Commission 65 A.D.2d 898.

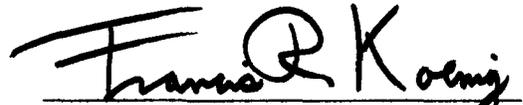
C. That the petition of Thomas Lee Wollschleger is denied and the refund denial issued August 18, 1975 is sustained.

DATED: Albany, New York
NOV 28 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER