

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Anthony J. Brown :  
d/b/a Tony Brown Quality Homes : AFFIDAVIT OF MAILING  
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 12/1/72-11/30/75. :

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 9th day of January, 1981, he served the within notice of Decision by mail upon Anthony J. Brown, d/b/a Tony Brown Quality Homes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anthony J. Brown  
d/b/a Tony Brown Quality Homes  
P.O. Box 757  
Plattsburgh, NY 12901  
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  
9th day of January, 1981.

*Cornie P. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Anthony J. Brown :  
d/b/a Tony Brown Quality Homes : AFFIDAVIT OF MAILING  
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 12/1/72-11/30/75. :

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 9th day of January, 1981, he served the within notice of Decision by mail upon Anthony R. Jones the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Anthony R. Jones  
Ten Oak St.  
Plattsburgh, NY 12901

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  
9th day of January, 1981.

Conrad R. Haglund

Jay Vredenburg

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

January 9, 1981

Anthony J. Brown  
d/b/a Tony Brown Quality Homes  
P.O. Box 757  
Plattsburgh, NY 12901

Dear Mr. Brown:

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  
Anthony R. Jones  
Ten Oak St.  
Plattsburgh, NY 12901  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ANTHONY J. BROWN	:	DECISION
D/B/A TONY BROWN QUALITY HOMES	:	
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 December 1, 1972 through	:	
November 30, 1975.	:	

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Petitioner, Anthony J. Brown d/b/a Tony Brown Quality Homes, P.O. Box 757, Plattsburgh, New York 12901, 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 period December 1, 1972 through November 30, 1975 (File No. 15018).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on May 25, 1979 at 1:15 P.M. Petitioner appeared by Anthony R. Jones, CPA. The Audit Division appeared by Peter Crotty, Esq. (Patricia Brumbaugh, Esq., of counsel).

ISSUES

- I. Whether use tax is due on a damaged modular home installed by petitioner.
- II. Whether use tax is due on a model modular home installed by petitioner.
- III. Whether use tax on the modular homes installed by petitioner is based on the full price invoiced by the manufacturer.

FINDINGS OF FACT

1. On March 8, 1976, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Anthony J. Brown d/b/a Tony Brown Quality Homes for the period December 1, 1972 through November 30,

1975, for tax due of \$3,586.27, plus penalties and interest. The Notice was issued as a result of a field audit.

2. Petitioner filed an Application for Hearing to Review Determination on June 1, 1976.

3. On audit, the Audit Division determined that seven modular homes purchased and installed by petitioner were subject to use tax. Use tax was assessed on the total invoice price billed by the manufacturer and was computed at the rate in effect at the time of purchase.

4. Petitioner is a dealer of modular homes and contracts for their installation. The installation of these homes constitutes a capital improvement to real property.

5. Petitioner sold one of the aforesaid modular homes to a customer for an agreed sum of \$17,710.00. On the manufacturer's delivery of the home to the customer's site, it was found that considerable damage had incurred in transit. Petitioner advised the customer not to accept the home as delivered; however, the customer chose to have the home erected as agreed in the contract. The unit was installed by a sub-contractor hired by petitioner.

The customer paid \$13,000.00 of the contract price to petitioner and refused to pay the balance until the home was repaired. Petitioner withheld payment for the home pending repairs of the damages. At the time of the hearing, the repairs had not been made and payment for the modular home had not been made to the manufacturer. The invoiced amount of \$13,329.00 was never adjusted by the manufacturer.

It was the contention of petitioner that a sale did not take place between the manufacturer and himself, and that a tax liability on his cost of the modular home had not been incurred.

6. Petitioner installed another of the aforesaid modular homes on land owned by him. Petitioner displayed the unit as a model home. Petitioner intended to sell the home together with the land; however, at the time of the audit, the property had not been sold. Petitioner conceded that use tax was due; however, he contended that the taxable base should be 63 percent of the price invoiced by the manufacturer.

7. Petitioner reported use tax on the remaining five modular homes on his quarterly sales and use tax returns. The tax base used for each unit was 63 percent of the invoice price billed petitioner by the manufacturer. Petitioner contended that it paid use tax on 63 percent of the purchase price of a modular home pursuant to an agreement between the manufacturer and the Audit Division. Petitioner submitted no documentation to show that any agreement was made between him and the Audit Division.

8. The purchase invoices for the seven units in question did not include installation charges. Installation of the homes was made by an authorized sub-contractor hired by petitioner and paid directly by petitioner.

#### CONCLUSIONS OF LAW

A. That the purchase of a modular home although not paid for by petitioner as described in Finding of Fact "5" constituted a purchase at retail as defined in section 1101(b)(1) of the Tax Law. Such purchase is subject to the imposition of compensating use tax under section 1110(A) of the Tax Law; moreover, the tax due shall be on the price billed by the manufacturer since there is no evidence to show that the price was reduced.

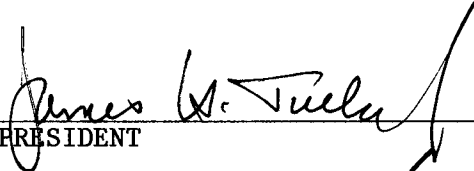
B. That the purchase of the model modular home described in Finding of Fact "6" and the purchases of the modular homes described in Finding of Fact "7" are subject to the use tax pursuant to section 1110(A) of the Tax Law. Said tax is based upon the invoice price billed by the manufacturer.

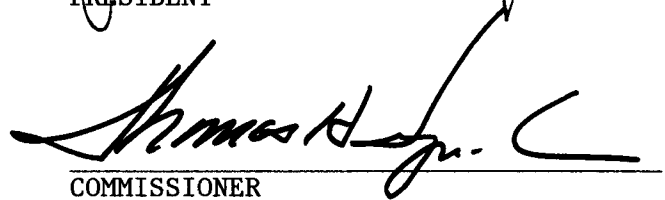
C. That the petition of Anthony J. Brown d/b/a Tony Brown Quality Homes is denied; and that the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 8, 1976 is sustained.


DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER