

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Robert Yung

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: 1974.

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 27th day of November, 1981, he served the within notice of Decision by certified mail upon Robert Yung, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert Yung
26 Buttercup Dr.
Bohemia, NY 11716

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
27th day of November, 1981.

Annie G. Highland

J. Vredenburg

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

November 27, 1981

Robert Yung
26 Buttercup Dr.
Bohemia, NY 11716

Dear Mr. Yung:

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
ROBERT YUNG
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 1974.

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DECISION

Petitioner, Robert Yung, 26 Buttercup Drive, Bohemia, New York 11716, 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 1974 (File No. 14453).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 9, 1980, at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner, Robert Yung, is entitled to a refund of sales tax paid on his purchase of a mobile home unit.

FINDINGS OF FACT

1. On July 21, 1975, petitioner filed an application for refund of sales tax paid in the amount of \$1,007.65 on his purchase of a mobile home. The application was made on the grounds that the home was permanently affixed to real property and would not be removed if sold.

2. The Audit Division denied the application for refund on March 12, 1976, on the grounds that the mobile home was tangible personal property and subject to tax under section 1105(a) of the Tax Law.

3. Petitioner purchased a 14x60 ft. mobile home unit from V.I. Landson, Inc. on September 5, 1974 for a total sum of \$14,395.00 and paid the sales tax of \$1,007.65 thereon. The purchase price included blocking, sewer, water, electrical connections, shed, skirting, steps, patio, driveway, grading and seeding of lot 35 on property owned by Bunker Hill Estates. Thereafter, petitioner paid a monthly rental for the lot to Bunker Hill Estates.

4. Petitioner argued that once the home was placed on the foundation it became real property and should not be subject to the sales tax. He further argued that the lot is subject to real property taxes and, therefore, the home is being taxed twice because the real property taxes paid by Bunker Hill Estates are included in petitioner's monthly rent.

CONCLUSIONS OF LAW

A. That the mobile home unit purchased by petitioner constitutes tangible personal property subject to tax under section 1105(a) of the Tax Law.

B. That petitioner's contention that he is entitled to a refund of the sales tax since mobile homes are treated as real property under the Real Property Tax Law is without merit. The real property tax statute merely classifies mobile homes as real property for real estate tax purposes and cannot determine the status of mobile homes under the Sales Tax Law (Robert Roberson v. State Tax Commission, 65 A.D.2d 898). Moreover, the mobile home is located on land not owned by petitioner but rather is located on land which petitioner rents on a monthly basis. That the mobile home in issue may be sold separately from the land (Broadway Mobile Home Sales Corporation v. State Tax

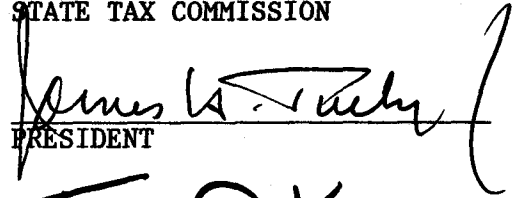
Commission, 67 A.D.2d 1029). Accordingly, the mobile home is not affixed to the land with the degree of permanency necessary to constitute a capital improvement to real property.

C. That the petition of Robert Yung is denied, and the refund denial issued March 12, 1976 is sustained.

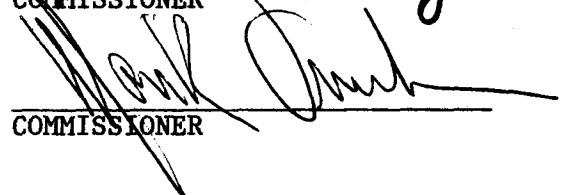
DATED: Albany, New York

NOV 27 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER