

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Norman W. Ayers :  
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 :  
1979. :  
\_\_\_\_\_

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 3rd day of December, 1982, he served the within notice of Decision by certified mail upon Norman W. Ayers, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

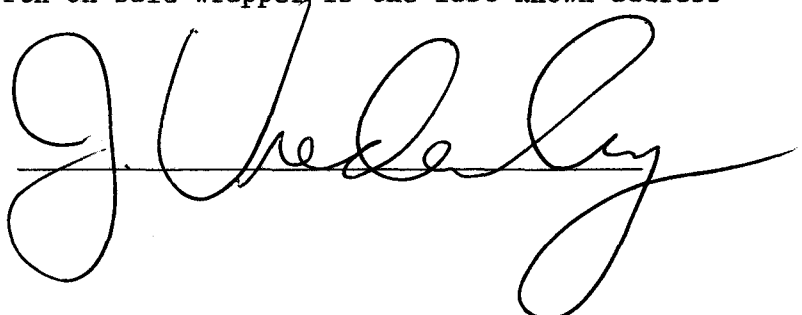
Norman W. Ayers  
109 Legion Dr.  
N. Syracuse, NY 13212

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  
3rd day of December, 1982.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

December 3, 1982

Norman W. Ayers  
109 Legion Dr.  
N. Syracuse, NY 13212

Dear Mr. Ayers:

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) 1139 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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

NORMAN W. AYERS

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 October, 1979.

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DECISION

Petitioner, Norman W. Ayers, 109 Legion Drive, North Syracuse, New York, 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 October, 1979 (File No. 28457).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 28, 1981, at 10:45 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq. of counsel).

ISSUE

Whether the installation of wall to wall carpeting constitutes a capital improvement to real property.

FINDINGS OF FACT

1. On November 8, 1979, petitioner, Norman W. Ayers filed an application for a refund for sales taxes of \$39.55 paid on the purchase and installation of wall to wall carpeting. The basis for petitioner's claim is that the carpet was installed in such a manner to constitute a capital improvement to real property as defined in 20 NYCRR 527.7(a)(3).

2. On December 10, 1979, the Audit Division denied the refund claim in full on the grounds that carpet installed over a finished floor is not a capital improvement.

3. The wall to wall carpeting in issue was installed in two ways; (1) removal of existing molding, nailing tack boards around the perimeter of the room, carpet pad stapled to the existing floor and the carpet laid and attached to the tack boards and (2) removal of existing molding, spreading latex adhesive over existing floor and affixing the carpet (rubber back) to the floor. Both of the above installations were over existing hardwood floors.

4. Petitioner intended that the installations become permanent.

#### CONCLUSIONS OF LAW

A. That 20 NYCRR 527.7(a)(3) defines "capital improvement" as an addition or alteration to real property "... (i) which substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property, and (ii) which becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself, and (iii) is intended to become a permanent installation."

B. That the carpet referred to in Finding of Fact "3" was not affixed to the real property with the degree of permanency required to constitute a capital improvement, nor would the removal of such carpeting cause material damage to the real property. Therefore, the carpeting installed in such a manner does not constitute a capital improvement within the meaning and intent of section 1105(c)(3) of the Tax Law and 20 NYCRR 527.7(a)(3).

C. That the petition of Norman W. Ayers is denied and the refund denial issued December 10, 1979 is sustained.

DATED: Albany, New York

DEC 03 1982

STATE TAX COMMISSION

**ACTING**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER