

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Mr. & Mrs. Joseph B. Jarentowitz :  
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

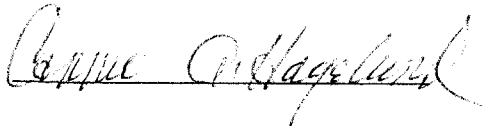
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 18th day of June, 1982, he served the within notice of Decision by certified mail upon Mr. & Mrs. Joseph B. Jarentowitz, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

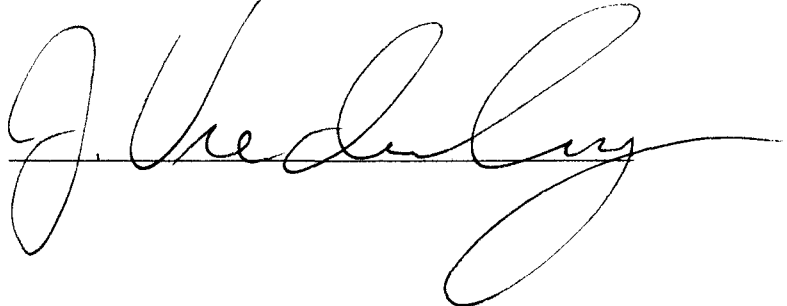
Mr. & Mrs. Joseph B. Jarentowitz  
525-207 Riverleigh Ave.  
Riverhead, NY 11901

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  
18th day of June, 1982.





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

June 18, 1982

Mr. & Mrs. Joseph B. Jarentowitz  
525-207 Riverleigh Ave.  
Riverhead, NY 11901

Mr. & Mrs. Jarentowitz:

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 & 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  
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	:	
	:	
MR. & MRS. JOSEPH B. JARENTOWITZ	:	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 Period 1974.	:	

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Petitioners, Mr. and Mrs. Joseph B. Jarentowitz, 207-525 Riverleigh Avenue, Riverhead, New York 11901, 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. 14446).

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 June 2, 1981, at 10:45 A.M. Petitioner Joseph B. Jarentowitz appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether petitioners are entitled to a refund of sales tax paid on the purchase of a manufactured home.

FINDINGS OF FACT

1. On August 19, 1974, petitioners contracted for the purchase of a 56'X 24' manufactured home from Pashisha, Inc. for \$20,003.50 plus 7 percent sales tax of \$1,400.25.
2. On April 7, 1975, petitioners Mr. and Mrs. Joseph B. Jarentowitz filed an Application for Credit or Refund of State and Local Sales or Use Tax of \$1,400.25 on the grounds that the home was permanently installed on real

property and was subject to real property tax. Therefore, petitioners reasoned that they were subject to double taxation.

3. The Audit Division denied petitioners' claim for refund on March 16, 1976. The basis for the denial was that the home was purchased prior to being placed on a permanent site and therefore such home was tangible personal property subject to the sales tax. It was the Audit Division's position that where the purchaser is a tenant, such as in a mobile home park, an intent to permanently affix the home to realty will not be found and a sales tax must be collected from the purchaser.

4. Pashisha, Inc. set up petitioners' home on cement blocks and attached it to the ground by hurricane anchors. It then connected permanent utilities such as electricity, water, fuel supplies and a septic tank. Petitioners' home was installed on land owned by MacLeod's: an adult community. Petitioners leased the land yearly from MacLeod's, making monthly payments on such lease.

5. Petitioners were billed monthly by MacLeod's for base rent and a tax portion. As operating costs and taxes billed to MacLeod's increased, the proportionate share of rent billed to tenants increased. Petitioners therefore contend that their home is subject to real property tax and should not be subject to sales tax.

6. Petitioners' home cannot be easily moved and would require dismantling if so done.

#### CONCLUSIONS OF LAW

A. That the manufactured home purchased by petitioners did not constitute a capital improvement to real property owned by petitioners. The home was affixed on another's land which was leased on a yearly basis. The tax portion of rental paid was a reimbursement to the land owner for real property taxes

and not a direct payment thereof. The fact that the home is classified as real property for real estate tax purposes does not by itself determine the status of such homes under the Sales Tax Law (Roberson v. State Tax Commission, 65 A.D. 2d 898). Moreover, the home would be sold separately from the land.

B. That the purchase of the manufactured home by petitioners constituted the purchase of tangible personal property subject to tax under section 1105(a) of the Tax Law.

C. That the petition of Mr. and Mrs. Joseph B. Jarentowitz is denied and the refund denial issued March 16, 1976 is sustained.

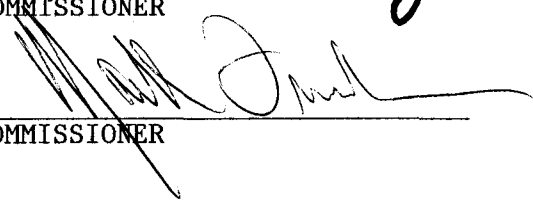
DATED: Albany, New York

JUN 18 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER