

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Norms New & Used Trailer Sales, Inc., Norman D. Lockin, :  
Norman E. Lockin, Louise Lockin, William Gray, :  
Individually & As Officers : 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 9/1/72 - :  
2/28/75. :  
\_\_\_\_\_ :

State of New York  
County of Albany

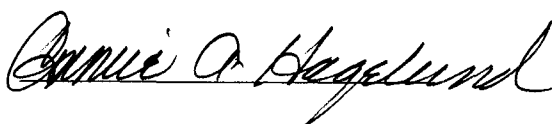
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 4th day of August, 1982, he served the within notice of Decision by certified mail upon Norms New & Used Trailer Sales, Inc., Norman D. Lockin, Norman E. Lockin, Louise Lockin, William Gray, Individually & As Officers, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

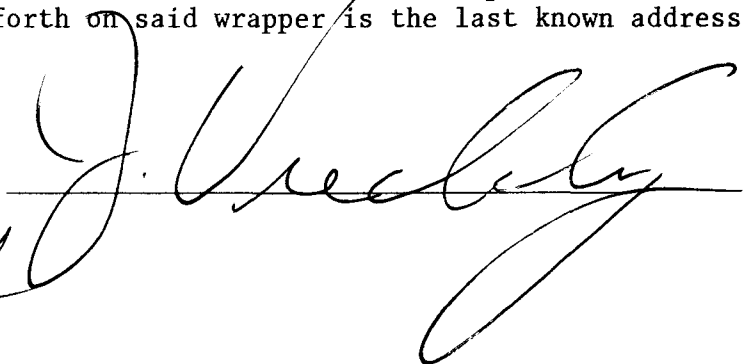
Norms New & Used Trailer Sales, Inc., Norman D. Lockin,  
Norman E. Lockin, Louise Lockin, William Gray,  
Individually & As Officers  
c/o Steiner & Steiner  
90 State St.  
Albany, NY 12207

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  
4th day of August, 1982.

  
Jamie A. Haglund

  
J. Vredenburg

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Norms New & Used Trailer Sales, Inc., Norman D. Lockin, :  
Norman E. Lockin, Louise Lockin, William Gray, :  
Individually & As Officers : 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 9/1/72 - :  
2/28/75. :  
\_\_\_\_\_

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Eugene J. Steiner the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eugene J. Steiner  
Steiner & Steiner  
90 State St.  
Albany, NY 12207

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  
4th day of August, 1982.

*Barbara P. Haglund*

*J. Vredenburg*

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

August 4, 1982

Norms New & Used Trailer Sales, Inc.  
Norman D. Lockin, Norman E. Lockin, Louise Lockin,  
William Gray, Ind. & As Officers  
c/o Steiner & Steiner  
90 State St.  
Albany, NY 12207

Gentlemen:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Eugene J. Steiner  
Steiner & Steiner  
90 State St.  
Albany, NY 12207  
Taxing Bureau's Representative

## STATE TAX COMMISSION

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 8, 1979 at 10:45 A.M. and was continued on June 4, 1979 at 1:15 P.M. Petitioners appeared by Eugene Steiner, Esq. The Audit Division appeared by Peter Crotty, Esq. (Ellen Purcell, Esq., of counsel).

I. Whether certain sales of mobile and modular homes were sales of tangible personal property or whether such sales constituted a capital improvement to real property.

II. Whether an agreement between petitioner Norm's New and Used Trailer Sales, Inc. and a second party relieved the petitioners from sales tax liability for the period January 31, 1974 through January 31, 1975.

FINDINGS OF FACT

1. During the period at issue, petitioner Norm's New and Used Trailer Sales, Inc. (Norm's) was a dealer of mobile homes, double wide mobile homes and modular homes. Norm's also acted as a contractor for the installation of certain homes on foundations, thus performing capital improvements to real property.

2. On November 11, 1975, as the result of an audit, the Sales Tax Bureau issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioners, Norm's New and Used Trailer Sales, Inc. and Norman D. Locklin, Norman Locklin, Jr., Louise A. Locklin and William Gray, Individually and as Officers, for the period June 1, 1972 through February 28, 1975. The Notice was issued for \$5,486.26, plus penalty and interest of \$1,839.10, for a total of \$7,325.36.

Petitioner, Norman E. Locklin and Norman Locklin, Jr., named in the above notice, are the same person.

3. On November 22, 1975, petitioner Norm's New and Used Trailer Sales, Inc. filed an Application for Hearing to Review a Determination on the grounds that the Sales Tax Bureau erroneously interpreted the sales tax law and that Louise A. Locklin, William Gray and Norman Locklin, Jr. should not be held individually liable for sales taxes.

4. On audit, the Sales Tax Bureau examined sales contracts for the entire period at issue and found four sales of mobile homes which were sold as tangible personal property and Norm's failed to collect sales taxes totaling \$2,049.20. The Sales Tax Bureau also found four transactions involving the sale

of modular homes that Norm's installed on foundations and, as such, were considered capital improvements to real property. It was determined that Norm's failed to pay a sales or use tax on the modular homes purchased and used in the performance of said capital improvements and, therefore, was held liable for use taxes of \$2,937.06. The audit also included additional sales taxes of \$500.00 based on information received regarding a transaction involving petitioner Norman E. Locklin and Robert Wilson. Mr. Wilson inquired at the Plattsburgh office if a sales tax payment of \$500.00 made to Norman E. Locklin was paid over to the Tax Commission. The Sales Tax Bureau found no record of this transaction in Norm's books and records.

5. On June 20, 1973, Rodney Gray, Sue Gray and Richard Drain sold their interest in a mobile home that had been purchased from Norm's New and Used Trailer Sales, Inc. on October 8, 1971 to Robert Wilson pursuant to a "Transfer of Interest Agreement". Said agreement also provided that the dealer, Norm's New and Used Trailer Sales, Inc., consented to the transfer and agreed that said transfer shall not release, alter or in any manner affect its liability and obligation to assignee, Commercial Credit Corp. Robert Wilson provided the Sales Tax Bureau with an undated receipt signed by Norman E. Locklin that stated "received \$500.00 from Robert Wilson for sales tax and services from Norm's Modular Homes". Based on the foregoing documents, the Sales Tax Bureau held Norm's liable for \$500.00 in sales taxes.

Norm's New and Used Trailer Sales, Inc. contended that Norm's Modular Homes was a different business operated by Norman E. Locklin in another location and was in no way connected with Norm's New and Used Trailer Sales, Inc. and, therefore, the receipt from Wilson would not be reflected in its books and records.

6. On January 31, 1974, Norm's New and Used Trailer Sales, Inc. executed an agreement with Ralph P. Coryer which contained the following provisions:

- (a) The party of the first part (Norm's New and Used Trailer Sales, Inc.) hereby agrees to allow the party of the second part (Ralph P. Coryer) to continue the present business in the corporate name of Norm's New and Used Trailer Sales, Inc. with the understanding that the U.S. Corporation Tax and Employment Tax and the New York State Franchise Tax will be paid by the party of the second part.
- (b) The party of the second part will bear all responsibility and will pay all expenses in connection with the conduct of this business except that the party of the first part will remain responsible for any taxes due on the land where the business is located.
- (c) The party of the second part will pay as rent to the party of the first part the sum of \$150.00 for each mobile home sold.
- (d) The party of the first part shall be entitled to receive the reserve funds credited by banks or finance companies resulting from this business.
- (e) The party of the second part agrees to save the party of the first part harmless and free from all liability with regard to the conduct of the business....
- (f) The party of the second part agrees not to draw more than \$200.00 per week and to furnish to the party of the first part a financial statement monthly....
- (g) The parties to the agreement intend its initial term to be one (1) year commencing on the first day of February, 1974 and ending on the 31st day of January, 1975, subject, however, to such renewals....

Norm's contended that the provisions of the agreement relieve it and its principals from any sales tax liability for the duration of the contract and that it was the responsibility of Ralph P. Coryer to collect and remit any sales and use taxes for the term of the agreement.

7. Under the provisions of the foregoing agreement, Ralph P. Coryer was allowed to operate the business under the corporate name of Norm's New and Used Trailer Sales, Inc. There was no change in the corporate entity and the

agreement did not provide for any change in corporate officers. Merely because the officers chose to delegate the responsibility for operating the business, they cannot delegate their liability for payment of taxes. The business bank accounts remained unchanged. Norman D. Locklin had authorization to sign checks and controlled the payment of bills.

8. With regard to the additional sales taxes determined on audit, Norm's New and Used Trailer Sales, Inc. argued that all transactions at issue constituted real property and, therefore, were not subject to sales or use tax. However, Norm's failed to show where it installed the mobile homes in a manner that would constitute a capital improvement.

9. On June 22, 1977, the Clinton County Court ordered that a tax warrant filed by the State Tax Commission against Norm's New and Used Trailer Sales, Inc. and Norman D. Locklin, Norman Locklin, Jr., Louise A. Locklin and William Gray, individually and as officers, be amended so as to delete the name of William Gray. Said order was based on an affidavit of an attorney for the State Tax Commission which stated that William Gray was not a person responsible for the sales tax liabilities incurred by his corporate employer, Norm's New and Used Trailer Sales, Inc.

Norm's New and Used Trailer Sales, Inc. adduced no evidence to show that Norman D. Locklin, Norman Locklin, Jr. and Louise Locklin were not under a duty to act for it in complying with the requirements of the Sales Tax Law.

#### CONCLUSIONS OF LAW

A. That petitioner Norm's New and Used Trailer Sales, Inc. transactions involving mobile homes were retail sales of tangible personal property within the meaning and intent of section 1101(b)(4) of the Tax Law; that the receipts from said sales are subject to sales tax under section 1105(a) of the Tax Law.



B. That where petitioner Norm's New and Used Trailer Sales, Inc. sold and permanently installed modular homes on real property owned by the customer, such transactions constituted capital improvements to real property; that the modular homes were purchased as tangible personal property by petitioner and used in the performance of a capital improvement, therefore, Norm's was liable for the tax on said purchases in accordance with the provisions of section 1110(a) of the Tax Law.

C. That the Sales Tax Bureau's determination that petitioner Norm's New and Used Trailer Sales, Inc. was liable for additional sales taxes of \$500.00 based on the documents set forth in Finding of Fact "5" was erroneous; that the documents do not show conclusively that Norm's New and Used Trailer Sales, Inc. sold a mobile home to Robert Wilson or that it received any monies from Mr. Wilson, therefore, the additional sales tax of \$500.00 is cancelled.

D. That in accordance with Finding of Fact "9", William Gray was not a person required to collect tax within the meaning and intent of section 1131(1) of the Tax Law and therefore is not personally liable for the taxes at issue.

E. That the agreement between Norm's New and Used Trailer Sales, Inc. and Ralph P. Coryer does not affect Norm's liability for sales and use taxes during the term of said agreement; that for the term of the agreement, as well as the entire audit period, Norm's New and Used Trailer Sales, Inc. was a "person required to collect tax" within the meaning and intent of section 1131(1) of the Tax Law; that said term also includes "any officer or employee... who as such officer or employee is under a duty to act for such corporation" and, therefore, Norman D. Locklin, Norman E. Locklin, and Louise A. Locklin are responsible officers as defined in section 1131(1) of the Tax Law and thereby

are personally liable for the sales tax pursuant to section 1133(a) of the Tax Law.

F. That the petitions of Norm's New and Used Trailer Sales, Inc., Norman D. Locklin, Norman E. Locklin and Louise A. Locklin are granted to the extent indicated in Conclusion of Law "C"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued on November 10, 1975 and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

**ACTING**

PRESIDENT

COMMISSIONER

COMMISSIONER