

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

August 31, 1983

William Walker
d/b/a Tri State Mobile & Modular Homes
RD #2
Port Jervis, NY 12771

Dear Mr. Walker:

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 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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Isaac Sternheim
114 Liberty St.
New York, NY 10006
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Walker :
d/b/a Tri State Mobile & Modular 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 :
3/1/76-2/28/79. :

State of New York
County of Albany

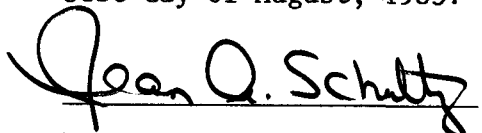
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1983, she served the within notice of Decision by certified mail upon William Walker, d/b/a Tri State Mobile & Modular Homes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Walker
d/b/a Tri State Mobile & Modular Homes
RD #2
Port Jervis, NY 12771

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
31st day of August, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Walker :
d/b/a Tri State Mobile & Modular Homes :
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 3/1/76-2/28/79. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1983, she served the within notice of Decision by certified mail upon Isaac Sternheim, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Isaac Sternheim
114 Liberty St.
New York, NY 10006

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
31st day of August, 1983.

Jean A. Schult

Connie B. Hagelund.

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM WALKER	:	DECISION
d/b/a TRI STATE MOBILE AND MODULAR 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 March 1, 1976	:	
through February 28, 1979.	:	

Petitioner, William Walker d/b/a Tri State Mobile and Modular Homes, RD #2, Port Jervis, New York 12771, 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 March 1, 1976 through February 28, 1979 (File No. 27936).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 18, 1982 at 10:30 A.M., with all briefs to be submitted by January 15, 1983. Petitioner appeared by Isaac Sternheim, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUES

Whether petitioner purchased tangible personal property for use in performing a capital improvement or whether the purchase itself constituted a capital improvement.

FINDINGS OF FACT

1. Petitioner, William Walker d/b/a Tri State Mobile and Modular Homes, was engaged in the sale of mobile and modular homes.

2. On June 20, 1979 as the result of an audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period March 1, 1976 through February 28, 1979

for taxes due of \$4,009.98, plus penalty and interest of \$1,764.40, for a total of \$5,774.38.

3. On audit, the Audit Division reviewed petitioner's purchases of modular homes for the audit period and found that the amount of sales tax shown on the purchase invoice was less than the actual tax due based on the tax rate in effect for the point of delivery. Petitioner explained to the auditor that the tax collected by the manufacturer represented the tax due based on the manufacturer's cost of materials incorporated into the home. The Audit Division took the position that petitioner installed the homes which constituted a capital improvement and as such, was liable for tax on the total purchase price of the home exclusive of freight charges. The total liability was determined to be \$7,703.05 of which \$3,693.07 was paid to the modular home manufacturers, leaving additional tax due of \$4,009.98.

4. Petitioner did not install the modular homes at issue. Such installations were performed by the manufacturer of the home (Upon review of contracts submitted by petitioner after the hearing, the Audit Division confirmed this fact).

CONCLUSIONS OF LAW

A. That the sale and installation of modular homes by the manufacturer of such homes constituted a capital improvement to real property within the meaning and intent of section 1105(c)(3) of the Tax Law. Accordingly, since petitioner purchased a capital improvement, the transactions are not subject to tax. Under the circumstances herein, the manufacturer is liable for the tax pursuant to section 1110 of the Tax Law.

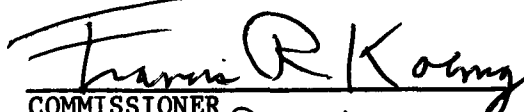
B. That the petition of William Walker d/b/a Tri State Mobile and Modular Homes is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued June 20, 1979 is cancelled.

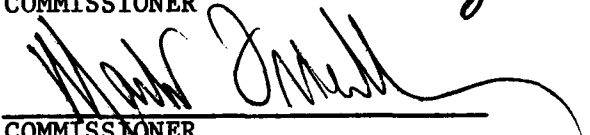
DATED: Albany, New York

STATE TAX COMMISSION

AUG 31 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

P 481 208 353

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to William Walker TR: State	
Street and No. Mobile + Mobile Home R.D. # 2	
P.O., State and ZIP Code Port Jervis N.Y. 12771	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 208 354

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Isaac Steinhorn	
Street and No. Twisted Ky Steinhorn 114 Liberty St	
P.O., State and ZIP Code New York N.Y. 10006	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982