

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Walter R. Buchs :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales and Use Tax
under Article(s) 28 & 29 of the Tax Law :
for the Period Ended August 31, 1983.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 11th day of March, 1987, he/she served the within notice of Decision by certified mail upon Walter R. Buchs the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Walter R. Buchs
Site No. 470, 1661 Old Country Road
Riverhead, NY 11901

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

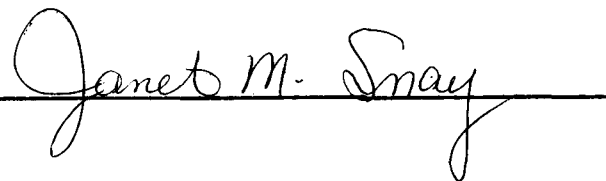
That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
11th day of March, 1987.



Authorized to administer oaths

pursuant to Tax Law section 174



Janet M. Snay

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

March 11, 1987

Walter R. Buchs
Site No. 470, 1661 Old Country Road
Riverhead, NY 11901

Dear Mr. Buchs:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WALTER R. BUCHS : 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 ended August 31, :
1983. :

Petitioner, Walter R. Buchs, Site No. 470, 1661 Old Country Road, 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 ended August 31, 1983 (File No. 63544).

On October 22, 1986, petitioner waived his right to a hearing and requested that a decision be rendered based on the entire record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether the installation of a central air conditioning unit in a manufactured home constitutes a capital improvement to real property.

FINDINGS OF FACT

1. On or about August 11, 1983, petitioner, Walter R. Buchs, purchased a Central Cool Air Conditioner from Stark Mobile Homes, Inc. ("Stark"). Mr. Buchs paid Stark \$2,100.00 for the appliance and its installation. He paid sales tax on this purchase of \$152.25.

2. Mr. Buchs filed an Application for Credit or Refund of State and Local Sales or Use Tax on January 24, 1985 in the amount of \$152.25. The basis for the refund claim was Mr. Buchs's assertion that the installation of the central air conditioning unit was a capital improvement.

3. The Audit Division denied Mr. Buchs's claim for refund, by letter dated June 12, 1985. The letter contained the following explanation of the Audit Division's determination:

"When a mobile home is located on land which you are leasing from a trailer park the home is not considered to be permanently installed. Any improvements to such home will be treated under the tax law as purchases of tangible personal property and not capital improvements."

4. Mr. Buchs describes his dwelling as a "manufactured home". The property on which the building sits also supports walkways, a patio, a driveway and a deck. The building is connected to the local municipal water pipes. It has its own in-ground cesspool and fuel tank. The property is rented from Stark.

CONCLUSIONS OF LAW

A. That receipts from the sale of tangible personal property sold by a contractor, subcontractor or repairman to a person for whom he is adding to, or improving real property, property or land by a capital improvement are exempt from the sales tax imposed by Section 1105(a) of the Tax Law (Tax Law § 1115 [a][17])). Section 1101(b)(9) of the Tax Law defines a capital improvement as:

"An addition or alteration to real property which:

(i) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and

(ii) 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 a mobile home does not constitute a capital improvement to real property, regardless of the nature of its installation (Tax Law § 1101[b][9][iii])). The statute defines a mobile home, in part, as a "structure which is: (A) A type of manufactured housing; and (B) Not self-propelled; and (C) Transportable in one or more sections...; and (D) Built on a permanent chassis, comprised of

frame and wheels....; and (E) Designed to be used as a permanent dwelling, with or without permanent foundation" (Tax Law § 1101[b][10]). Mr. Buchs did not provide extensive detail regarding the design of the dwelling he refers to as "manufactured housing". Inasmuch as the dwelling is located on land rented by Mr. Buchs and Mr. Buchs failed to provide any information which would dictate a contrary conclusion, the dwelling is deemed to fall within the statutory definition of a mobile home. Since the dwelling itself is not considered to be a capital improvement, the central air conditioning unit affixed to the dwelling can not be considered to be a capital improvement.

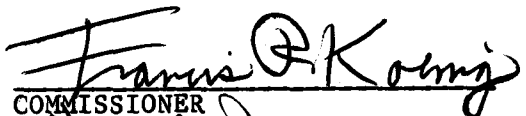
C. That the petition of Walter R. Buchs is denied, and the Audit Division's denial of a claim for refund is sustained.

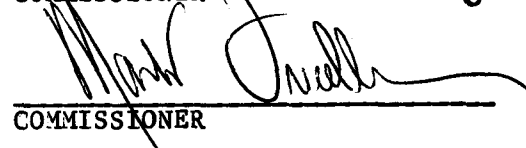
DATED: Albany, New York

STATE TAX COMMISSION

MAR 11 1987


PRESIDENT


COMMISSIONER


COMMISSIONER