

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-H-81 (16) S  
Sales Tax  
February 4, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. S800925A

On September 25, 1980, a Petition for Advisory Opinion was received from Greenwood Village Planned Retirement Community, Inc., P.O. Box 671, Center Moriches, New York 11934.

The issue raised is whether sales tax is due on receipts from the sale of certain modular homes on an installed basis, where the homes are located on land leased to the purchaser of the home.

Petitioner sets forth the following as the basis for the requested Advisory Opinion: "Greenwood Village Planned Retirement Community, Inc. ("Greenwood Village") is a planned retirement community located in the Town of Brookhaven, Suffolk County. Greenwood Village intends to sell modular homes to families as single family residences and to permanently install them on lots owned by Greenwood Village and leased under written lease agreements to buyers of the modular homes.

"The modular homes are of two types. One type will be placed on a crawl space foundation of concrete and permanently bolted to the perimeter of the concrete foundation with lag bolts. The second type will be placed on a crawl space foundation. Twenty-four concrete supports will be placed under the house and at each support the home will be permanently attached by lag bolts. Both homes will be permanently attached to their foundations and lots, and neither will be moveable."

Petitioner has submitted copies of the purchase agreement and lease forms utilized in its operations. These indicate that a home when purchased is placed on land owned by Greenwood Village which is leased to the purchaser. The lease is for a term of one year and by its terms ". . .may be renewed for an additional one-year term upon the mutual agreement of both parties." The purchaser is made responsible for payment of real estate taxes levied against the structure irrespective of whether the Town of Brookhaven bills the purchaser himself or the management directly. The purchaser has the right to sell his home but the Community (Greenwood Village Community Management, Inc.) "....reserves the right to approve the purchaser of its home...."

Section 1105(a) of the Tax Law imposes a tax on "The receipts from every retail sale of tangible personal property, except as otherwise provided in this article." Section 1105(c) (3) of the Tax Law imposes a tax on receipts from the service of "Installing tangible personal property. . .except for installing property which, when installed, will constitute an addition or capital improvement to real property, property or land. . ."

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JAMES H. TULLY, JR., COMMISSIONER    LOUIS M. JACOBSON, DEPUTY COMMISSIONER  
FRANK J. PUCCIA, DIRECTOR

The Sales and Use Tax Regulations provide that

- "(3) A capital improvement is 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." 20 NYCRR 527.7 (a) (3).

The issue raised herein was treated in Broadway Mobile Home Sales Corp. v. State Tax Commission 67 AD 2d 1029 (1979). The court there held that the sale of mobile homes on an installed basis, where the owners of the homes rented the land on a monthly basis, constituted sales of tangible personal property subject to the sales tax imposed under Article 28 of the Tax Law. The court cited three factors in support of its holding, as follows: "Here, as in Roberson, and most significantly, the homes were located on another's land which land was rented on a monthly basis. They could thus be sold by their owners separately from the land. Second, the testimony at the hearing revealed the possibility that the homes could be removed by their owners and transported elsewhere. Third, the owners of the homes, except those entitled to partial exemptions, were not billed directly for real estate taxes." Id., at 1030.

The factor cited as most significant by the court in Broadway Mobile Home is present in the instant matter. That is, as in Broadway Mobile Home, Petitioner's customers locate their homes on the land of another rented pursuant to a short-term lease (i.e., short-term as compared with the useful life of the structure). The second factor cited by the court is also present here. Although Petitioner characterizes the installed homes as not moveable, it appears from Petitioner's own description that the homes could be removed even though it may be the case, as in Broadway Mobile Home, that ". . . due to practical reasons, this apparently never occurred." Id., at 1029. Also as in the case of Broadway Mobile Home, in the present case the homes can be sold separately from the land. The third factor cited by the Court, direct billing to the purchaser for real estate taxes, appears not to have been a central factor because such billing was not universal. It should be noted in this regard that the court itself stated that determinations under the Real Property Tax Law are not necessarily dispositive of issues raised under the Tax Law. At any rate, the documents submitted by Petitioner appear to contemplate either direct or indirect billing to the purchaser of the homes.

Accordingly, the sales by Petitioner described above constitute sales the receipts from which are subject to the sales tax imposed under Article 28 of the Tax Law.

Dated January 13, 1981

s/ LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau