Corp Tel Determinations
A-Z
Motel Equipment Co., Inc.

STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BOARD OF CONFEREES - - CORPORATION TAX BUREAU

In the Matter of the Application of

MOTEL EQUIPMENT CO.INC.

for revision or refund of franchise tax under Section 182, Article 9, of the Tax Law based on the year ended December 31, 1959.

Hearing Case No. 5883

The tax based on the year ended December 31, 1959 was reaudited on December 3, 1965, as follows:

Gross Assets	$3,098,960.00
Tax at one-quarter mill	774.74
Dividends	381,475.00
Tax at 2%	7,629.50
Total Tax	$ 8,404.24

The above assessment was based on a field audit examination conducted by our New York office. The field examiner increased the amount of taxable dividends by $380,000.

Timely application for revision or refund was filed on June 7, 1966.

Taxpayer contends that the dividend consisted of a stock dividend which was later cancelled and rendered void and of no effect.

The information on file indicates that the corporation was organized under New York laws on May 1, 1959 with $20,000 of capital stock being issued. Pursuant to a Board of Directors' resolution dated August 27, 1959 the taxpayer revalued land and building upward and credited the capital stock account with an additional $380,000. Such bookkeeping entry was accompanied by the issuance to the shareholders of a stock dividend in the amount of $380,000.

At a special meeting of the Board of Directors held on January 10, 1961 a resolution was adopted to cancel the stock dividend. At the time of sale of the property on February 28, 1962 an entry was made on the books eliminating the $380,000 from the surplus account.

The Board believes no tax should be imposed on the stock dividend since it was subsequently cancelled and rendered null and void. The corporation, in effect, felt that the asset involved was acquired at a most advantageous price and was worth $380,000 more. The taxpayer should not be penalized for anticipating a profit before it was realized when, after reconsidering the matter, it retraced its steps and nullified the previous acts.

It is recommended that a corrected assessment be issued as follows eliminating the amount of $380,000 as a taxable dividend:

Gross Assets	$3,098,960.00
Tax at one-quarter mill	774.74
Dividends	1,475.00
Tax at 2%	29.50
Total Tax	$ 804.24

Approved [illegible] 8/22/66

W. F. Sullivan
Chairman
A. H. Galloway
J. Lehevich

Approved
E. A. Downey

WJC:MB
July 18, 1966