

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Allied Woodbrook, Inc.

:

:

AFFIDAVIT OF MAILING

for Revision of a Determination or for Refund of  
Tax on Gains Derived from Certain Real Property  
Transfers under Article 31B of the Tax Law.

:

:

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 3rd day of January, 1986, he served the within notice of Decision by certified mail upon Allied Woodbrook, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allied Woodbrook, Inc.  
164 Grafe Street  
Staten Island, NY 10309

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  
3rd day of January, 1986.

David Parchuck

Cornelia A. Hayward  
Authorized to administer oaths

pursuant to Tax Law section 174

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

January 3, 1986

Allied Woodbrook, Inc.  
164 Grafe Street  
Staten Island, NY 10309

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) 1444 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  
Law Bureau - Litigation Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ALLIED WOODBROOK, INC.	:	DECISION
for Revision of a Determination or for Refund	:	
of Tax on Gains Derived from Certain Real	:	
Property Transfers under Article 31-B of the	:	
Tax Law.	:	

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Petitioner, Allied Woodbrook, Inc., 164 Grafe Street, Staten Island, New York 10309, filed a petition for revision of a determination or for refund of tax on gains derived from certain real property transfers under Article 31-B of the Tax Law (File No. 56797).

Petitioner, by its president, Hyman Muss, has waived a hearing and submits its case for decision based on the entire file. After due consideration of the file, the Commission renders the following decision.

ISSUE

Whether the imposition of tax pursuant to Tax Law Article 31-B upon the sale of subdivided parcels of real property improved with residences pursuant to a condominium plan is constitutionally permissible.

FINDINGS OF FACT

1. On May 9, 1984, May 14, 1984 and May 18, 1984, petitioner, Allied Woodbrook, Inc., submitted a series of refund claims pertaining to taxes paid under Tax Law Article 31-B upon its sales of condominium units to various individual purchasers. The aggregate amount of refund sought by petitioner via these claims is \$94,642.43, and each individual claim contains an identical statement upon which the refund is premised, as follows:

"Claimant submits that the real property transfer gains tax as applied to the Claimant is unconstitutional in that there is an arbitrary discrimination against condominium subdivision development and non-condominium development wherein the latter, up to \$1,000,000 is not subject to the gains tax and the former is subject to gains tax regardless of the cost of the unit."

2. By a letter dated August 15, 1984, the Audit Division denied in full petitioner's claims for refund. Petitioner timely filed a petition contesting this denial, stating therein the same position as was set forth in each of the refund claims (refer to Finding of Fact "1"). On September 9, 1985, petitioner, by its president, Hyman Muss, waived a hearing and requested that the matter be decided based upon the entire file.

#### CONCLUSIONS OF LAW

A. That section 1441 of the Tax Law, which became effective March 28, 1983, imposes a tax at the rate of ten percent upon gains derived from the transfer of real property within New York State.

B. That Tax Law section 1440(7) provides, in part, as follows:

"'Transfer of real property' means the transfer or transfers of any interest in real property by any method... Transfer of real property shall also include partial or successive transfers pursuant to an agreement or plan to effectuate by partial or successive transfers a transfer which would otherwise be included in the coverage of this article, provided that the subdividing of real property and the sale of such subdivided parcels improved with residences to transferees for use as their residences, other than transfers pursuant to a cooperative or condominium plan, shall not be deemed a single transfer of real property." (emphasis added).

C. That in view of the foregoing, petitioner was subject to tax upon the transfers of the condominium units in issue, and the Audit Division's denial of the claims for refund was proper.


D. That the constitutionality of the laws of the State of New York is presumed at the administrative level.

E. That the petition of Allied Woodbrook, Inc. is hereby denied and the denial of petitioner's claims for refund is sustained.

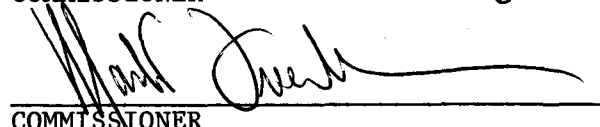
DATED: Albany, New York

STATE TAX COMMISSION

JAN 03 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER