

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
Cove Hollow Farm, Inc. : AFFIDAVIT OF MAILING

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. :

---

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 3rd day of July, 1986, he/she served the within notice of Decision by certified mail upon Cove Hollow Farm, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Cove Hollow Farm, Inc.  
Box 1057 Briar Patch Rd.  
East Hampton, NY 11937

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 July, 1986.

David Parchuck

Janet M. Snay  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE TAX COMMISSION

Janet M. Snay  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

July 3, 1986

Cove Hollow Farm, Inc.  
Box 1057 Briar Patch Rd.  
East Hampton, NY 11937

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  
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

Petitioner's Representative:  
Michael V. Sterlacci  
Winthrop, Stimson, Putnam & Roberts  
40 Wall St.  
New York, NY 10005

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
COVE HOLLOW FARM, INC.  
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.

---

:  
:  
:  
:  
:  
:

DECISION

Petitioner, Cove Hollow Farm, Inc., P.O. Box 1057, Briar Patch Road, East Hampton, New York 11937, 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. 63142).

Petitioner, by its duly authorized representative, Winthrop, Stimson, Putnam & Roberts, Esqs. (Michael V. Sterlacci and Susan M. Beck, Esqs., of counsel), has waived a hearing and submitted its case for decision based on the entire file, including a Stipulation of Facts, together with briefs to be submitted by May 14, 1986. After due consideration, the Commission renders the following decision.

#### ISSUES

I. Whether petitioner's transfers of individual lots from a subdivision of unimproved real property should properly be aggregated for purposes of computing tax due under Tax Law Article 31-B.

II. Whether, if so, such aggregation requirement violates the equal protection clauses of the United States and New York State Constitutions.

#### FINDINGS OF FACT

1. On April 7, 1986, a Stipulation of Facts pertaining to the petition of Cove Hollow Farm, Inc., duly executed by authorized representatives for petitioner

(Michael V. Sterlacci, Esq.) and for the Audit Division (Paul A. Lefebvre, Esq.), was submitted. This stipulation, modified herein only insofar as to delete references to various documents attached to the stipulation as exhibits (the existence and authenticity of which documents is not disputed), provides as follows:

a) The petitioner (Cove Hollow Farm, Inc.) is a New York corporation with its principal place of business at Box 1057, Briar Patch Road, East Hampton, New York 11937. Its employer identification number is 11-2486756.

b) On December 18, 1978, a subdivision plan for Cove Hollow Farm (the "subdivision") was filed and recorded in the Office of the County Clerk of Suffolk County. The subdivision, as approved by the Village of East Hampton, Suffolk County, consists of a 118-acre parcel of land subdivided into 42 unimproved lots zoned exclusively for one family residential purposes.

c) In February of 1979, petitioner acquired the unsold lots in the subdivision, including the property at issue, through contribution by its shareholders. The shareholders inherited this property from their uncle, who had occupied the property as his principal residence.

d) Before March 28, 1983, the effective date of the Real Property Transfer Gains Tax, 27 of the 42 lots in the subdivision had been sold by the petitioner or by the prior owners. Each of the subdivided lots has been offered for sale to the general public.

e) Since March 28, 1983, the petitioner has made the following sales from the subdivision:

<u>Lots</u>	<u>Buyer</u>	<u>Gain on Sale (as defined in Tax Law §1440.3)</u>	<u>Date Sold</u>	<u>Called in this Claim for Refund</u>
29 and 30	Arthur Ross	\$681,975.58	12/21/83	Transfer #1
27 and 28	The Trust for Public Land	\$669,120.55	3/13/84	Transfer #2
31	Arthur Ross	\$340,987.80	4/22/84	Transfer #3
23	Steven and Gloria Cohen	\$302,988.00	5/17/85	Transfer #4
36	Howard W. Phillips	\$351,838.72	8/6/85	Transfer #5

f) All of the sales of the foregoing six lots represented separate and individually bargained for sales of each lot offered for sale.<sup>1</sup> The four purchasers listed above are not related.

g) As of the date hereof (March 5, 1986), eight lots owned by the petitioner in the subdivision remain unsold.

h) Prior to Transfer #2, petitioner filed a Transferor's Questionnaire that included both the property sold in Transfer #2 and the property sold in Transfer #1. The petitioner aggregated the two transfers because the New York State Department of Taxation and Finance (the "Department") had taken the position that such aggregation was required under the Tax Law.

i) On March 8, 1984, the Department issued a Tentative Assessment and Return with a Schedule of Adjustments for Transfers #1 and #2. The Return for Transfer #1 contained a mathematical error and petitioner filed a Supplemental Return correcting the error.

j) On March 13, 1984, petitioner paid a Real Property Transfer Gains Tax of \$135,109.63 based upon the aggregation of Transfers #1 and #2.

---

<sup>1</sup> The stipulation's reference to the "...foregoing six lots..." should apparently be corrected to read "...foregoing seven lots...".

k) On April 23, 1984, petitioner paid an additional Real Property Transfer Gains Tax on \$34,098.78 for Transfer #3. The petitioner paid this tax because of the position the Department had taken on the aggregation of sales from the subdivision.

l) On February 20, 1985, petitioner filed a refund claim for \$169,208.41, the aggregate Real Property Transfer Gains Tax paid with respect to Transfers #1, 2 and 3, on the grounds that the transfers were separate, and that each transfer was for a consideration less than \$1,000,000.

m) In a letter dated April 3, 1985, the Department stated that it had denied the petitioner's refund application in its entirety.

n) Since the petitioner filed its refund claim for the tax paid on Transfers #1, #2 and #3, it has made two additional sales from the subdivision that are not the subject of this proceeding (Transfer #4 and #5). The petitioner has paid a Real Property Transfer Gains Tax of \$30,488.99 on Transfer #4 and \$35,183.87 on Transfer #5. On July 2, 1985, the petitioner filed a claim for refund of the entire \$30,488.99 tax paid with respect to Transfer #4. As of this date, the petitioner has not received any Notice from the Department with respect to this claim.

#### CONCLUSIONS OF LAW

A. That Tax Law section 1441, which became effective March 28, 1983, imposes a tax on gains derived from the transfer of real property within New York State. Tax Law section 1443.1 provides that no tax shall be imposed if the consideration is less than one million dollars.

B. That Tax Law section 1440.7, as in effect on the dates of the transfers herein at issue, provided, in part, as follows:

"[t]ransfer 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 exemption from the foregoing aggregation requirement of section 1440.7 is afforded in instances of subdivision and subsequent sales of such subdivided real property if the subdivided parcels, when sold, are improved with residences to be used by the transferees as residences. Since the subject parcels in the subdivision as sold by petitioner were not improved with residences when sold, petitioner was not properly entitled to exemption from the aggregation requirement of section 1440.7.


D. That the constitutionality of the laws of New York State, and their application in particular instances, is presumed at the administrative level of the State Tax Commission.

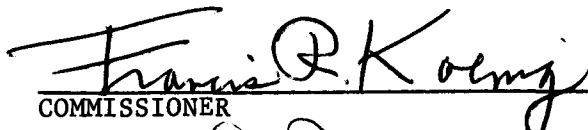
E. That the petition of Cove Hollow Farm, Inc. is hereby denied and the Audit Division's denial of petitioner's claim for refund is sustained.

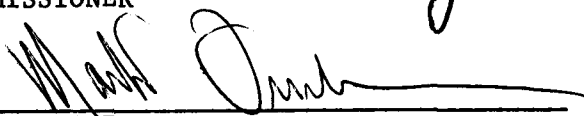
DATED: Albany, New York

STATE TAX COMMISSION

JUL 03 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER