

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Elmcors Management Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Tax on Gains
Derived from Certain Real Property Transfers :
under Article(s) 31B of the Tax Law.

State of New York :

ss.:

County of Albany :

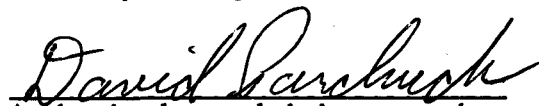
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 26th day of September, 1986, he/she served the within notice of Decision by certified mail upon Elmcors Management Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

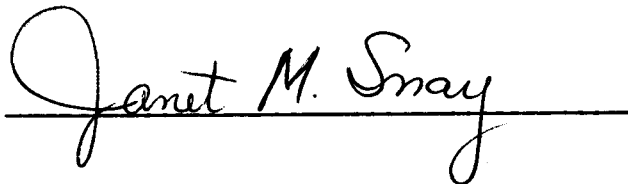
Elmcors Management Corp.
37-08 90th Street
Jackson Heights, NY 11372

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
26th day of September, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Elmcot Management Corp. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Tax on Gains
Derived from Certain Real Property Transfers :
under Article(s) 31B 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 26th day of September, 1986, he served the within notice of Decision by certified mail upon Howard M. Koff, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Howard M. Koff
600 Broadway
Albany, NY 12207

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 representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
26th day of September, 1986.

David Parchuck

Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

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

September 26, 1986

Elmcor Management Corp.
37-08 90th Street
Jackson Heights, NY 11372

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:
Howard M. Koff
600 Broadway
Albany, NY 12207

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ELMCOR MANAGEMENT CORP.	:	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.	:	

Petitioner, ElmcOR Management Corp., 37-08 90th Street, Jackson Heights, New York 11372, 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. 61994).

A hearing was commenced before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Building #9, W. Averell Harriman State Office Campus, Albany, New York, on January 22, 1986 at 11:00 A.M. and concluded before Arthur Bray, Hearing Officer, at the same offices on February 14, 1986 at 1:15 P.M., with all briefs to be filed by April 18, 1986. Petitioner appeared by Howard M. Koff, Esq. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether penalties asserted against petitioner for failure to timely file tax returns and pay tax due under Tax Law Article 31-B should be abated.

FINDINGS OF FACT

1. On or about October 12, 1984, petitioner, through a law firm which it retained, filed a New York State Real Property Gains Tax Questionnaire indicating

that petitioner anticipated a transfer of shares of stock pursuant to an apartment cooperative conversion plan on November 19, 1984.

2. On November 5, 1984, the Audit Division issued a Real Property Gains Tax Tentative Assessment and Return to petitioner, at its place of business, advising that the total tax due would be \$35,717.80.

3. On April 3, 1985, the Audit Division issued a Notice of Determination of Tax Due Under Tax Law Article 31-B. The Notice was based upon a determination by the Audit Division that petitioner was liable for tax in the amount of \$35,717.80, plus penalty of \$6,321.20 and interest computed to April 30, 1985 in the amount of \$2,315.33, for a total amount due of \$44,354.33.

4. At the hearing, the Audit Division acknowledged that it received payment on March 12, 1985 and further that the actual closing dates on the apartment units in issue took place at various times from January 21, 1985 through May 3, 1985. Accordingly, the Audit Division reduced the amount of penalty it had previously determined to be due to \$2,483.20.

5. On November 28, 1984, petitioner participated in two real estate closings. The first closing consisted of transferring the title to real property from Filmore Avenue Corporation, which was the sponsor of record, to petitioner. At the second closing, petitioner transferred title to a cooperative corporation known as 84-12 35th Avenue Apartment Corporation. The two closings took almost an entire day to complete.

6. In January, 1985, petitioner retained the services of a new attorney to represent it on the closings of the individual apartment units.

7. During the third or fourth week of February, 1985, petitioner received voluminous documents from its original law firm arising from the real estate closings which occurred on November 28, 1984. On or about March 6, 1985, which

was approximately two days after receipt, the documents were reviewed and petitioner discovered a schedule of anticipated tax due. Petitioner immediately contacted the law firm and was advised that real property gains tax was due. On March 6, 1985, petitioner remitted a check for the amount of real property gains tax due. In addition, petitioner's remittance included the payment of tax on anticipated transfers of apartments.

8. There were three individuals who conducted petitioner's affairs. Petitioner's managing agent had a background in the banking industry. The other individuals were a non-practicing attorney and a businessman.

9. Petitioner had never engaged in a cooperative conversion until November 28, 1984. Prior to this time, the only real estate experience of petitioner's principles consisted of dealing with residential property.

CONCLUSIONS OF LAW

A. That Tax Law section 1446(2)(a) provides, in part, that:

"[a]ny transferor failing to file a return or to pay any tax within the time required by [Article 31-B] shall be subject to a penalty... If the tax commission determines that such failure or delay was due to reasonable cause and not due to willful neglect, it shall remit, abate or waive all of such penalty..."

B. That it is not disputed that the tax due was not timely paid in connection with the transfers currently in question. As an excuse for these failures, petitioner asserts that: the double closing resulted in a substantial delay in the delivery of the closing documents to the taxpayer; the closing documents, including the schedule of tax due, were not received until after the closings of several units; all of the subscribers to the individual apartments were in default on November 28, 1984 and, therefore, the closings of the individual units could not have taken place at that time; and, after the double closing, petitioner changed attorneys. Petitioner further asserts

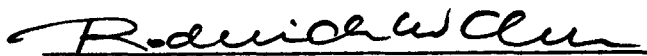
that there would not have been a delay in payment if any one of the foregoing circumstances had been different. In our opinion, petitioner's arguments must be rejected. In essence, petitioner's arguments are ignorance of the law and delay occasioned by its legal counsel. However, ignorance of the law is not a basis supporting abatement of penalties imposed. Further, since the Tentative Assessment and Return was mailed to petitioner's office, it was on notice of its tax obligations. Therefore, petitioner's claim of reliance upon counsel is not appropriate. Accordingly, in view of all the facts and circumstances presented, it does not appear that petitioner's failure to file and pay was occasioned as the result of reasonable cause, and penalty was properly imposed.

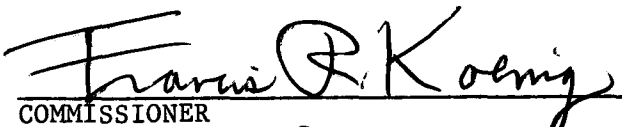
C. That the petition of Elmcour Management Corp. is denied and the penalty imposed for failure to pay the tax when due is sustained.

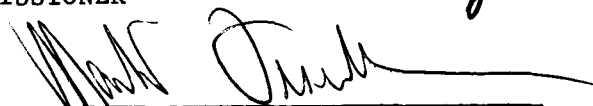
DATED: Albany, New York

STATE TAX COMMISSION

SEP 26 1986


PRESIDENT


COMMISSIONER


COMMISSIONER