

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Front Street Associates : 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. :  
:

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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 15th day of September, 1986, he/she served the within notice of Decision by certified mail upon Front Street Associates the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

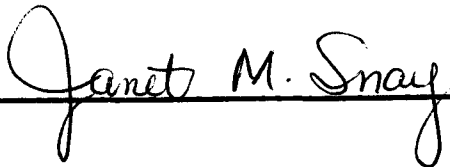
Front Street Associates  
c/o 389 Central Avenue  
Lawrence, NY 11559

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  
15th day of September, 1986.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



## STATE TAX COMMISSION

State of New York :  
County of Albany : ss.:

Samuel H. Golden  
Blum, Ross, Weisler, Bergstein, Golden & Weingold  
389 Central Ave., P.O. Box 280  
Lawrence, NY 11559

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.

David Carlucci  
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 15, 1986

Front Street Associates  
c/o 389 Central Avenue  
Lawrence, NY 11559

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:  
Samuel H. Golden  
Blum, Ross, Weisler, Bergstein, Golden & Weingold  
389 Central Ave., P.O. Box 280  
Lawrence, NY 11559

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
FRONT STREET ASSOCIATES	:	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, Front Street Associates, c/o 389 Central Avenue, Lawrence, New York 11559, filed a petition for revision of a determination or for refund of tax derived from certain real property transfers under Article 31-B of the Tax Law (File No. 62135).

A hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 1, 1986 at 10:45 A.M., with all briefs to be submitted by May 30, 1986. Petitioner appeared by Blum, Ross, Weisler, Bergstein, Golden & Weingold, Esqs. (Samuel H. Golden, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

#### ISSUE

Whether the assignment of a contract to purchase real property constitutes the transfer of an "interest in real property" subject to tax under Tax Law Article 31-B.

#### FINDINGS OF FACT

1. On March 9, 1983, the Estate of Grace Klein (by Margaret Pfaff, as Executrix) entered into a contract to sell certain real property located at Front Street, East Meadow (Nassau County), New York, to one Max Weisler.

2. The sale price under the contract was listed as "...a sum equal to \$21,621.62 multiplied by the number of condominium units approved for construction..., but not less than \$800,000.00."

3. On March 10, 1983, Max Weisler assigned the contract of sale to petitioner, Front Street Associates. The consideration for the assignment of the contract by Max Weisler to petitioner was not specified.

4. On February 10, 1984, petitioner assigned the contract to Vanderbilt Park Properties, Inc. Pursuant to the assignment agreement, petitioner transferred the contract to Vanderbilt Park Properties, Inc. in consideration of the sum of \$1,201,688.50.

5. On October 29, 1984, petitioner filed a Claim for Refund of Real Property Transfer Gains Tax ("gains tax"), seeking a refund of the \$49,575.29 gains tax installment payment made under protest by petitioner in connection with the assignment to Vanderbilt Park Properties, Inc. It is claimed that petitioner did not transfer real property or an interest in real property, and thus should not be subject to the gains tax.

6. By a letter dated May 6, 1985, the Audit Division denied petitioner's claim for refund.

#### CONCLUSIONS OF LAW

A. That Tax Law section 1441, 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. Tax Law section 1443(1), as in effect at the time of the assignment at issue, provided that no tax shall be imposed if the consideration is less than one million dollars.

B. That Tax Law section 1440(7) defines "transfer of real property" to mean "the transfer or transfers of any interest in real property by any method, including but not limited to sale, exchange, assignment..." (emphasis added).

C. That Tax Law section 1440(4), as in effect at the time of the transfer at issue, provided as follows:

"'Interest' when used in connection with real property includes but is not limited to title in fee, a leasehold interest, a beneficial interest, an encumbrance, a transfer of development rights or any other interest with the right to use or occupancy of real property or the right to receive rents, profits or other income derived from real property." (emphasis added).

D. That Tax Law section 1440(4) was amended by L. 1984, Ch. 900, §2 (approved August 5, 1984 and effective 30 days thereafter), whereby the following sentence was added to section 1440(4):

"Interest shall also include an option or contract to purchase real property."

E. That petitioner's assignment of the contract to purchase real property herein was a transfer of an interest in real property subject to tax under Tax Law Article 31-B (Matter of Robert H. Arnold & Richard B. Arnold, State Tax Comm., January 17, 1986). The language of Tax Law sections 1440(7) and 1440(4), as quoted herein with emphasis (see Conclusions of Law "B" and "C"), bears out this conclusion, as does the State Executive Department Memorandum accompanying the passage of L. 1984, Ch. 900 (McKinney's 1984 Session Laws of New York, pp. 3456-3463) by indicating that the amendatory language to section 1440(4) was added for the purpose of clarifying existing law.

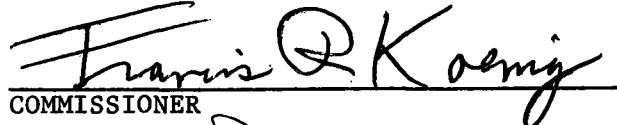
F. That the petition of Front Street Associates is hereby denied and the Audit Division's denial of petitioner's claim for refund is sustained.

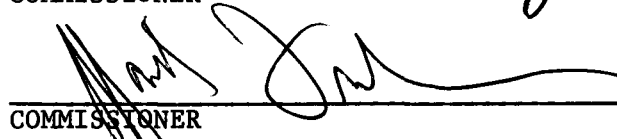
DATED: Albany, New York

STATE TAX COMMISSION

SEP 15 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER