

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Lafayette Gardens Terrace Co. :
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, 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 30th day of October, 1985, he served the within notice of Decision by certified mail upon Lafayette Gardens Terrace Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lafayette Gardens Terrace Co.
c/o Leon H. Gildin
888 Seventh Ave.
New York, NY 10106

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
30th day of October, 1985.

David Parchuck

Ann H. Gildin
Authorized to administer oaths
pursuant to Tax Law section 174

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

October 30, 1985

Lafayette Gardens Terrace Co.
c/o Leon H. Gildin
888 Seventh Ave.
New York, NY 10106

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

In the Matter of the Petition	:	
of	:	
LAFAYETTE GARDENS TERRACE CO.	:	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, Lafayette Gardens Terrace Co., c/o Leon H. Gilden, 888 Seventh Avenue, New York, New York 10106, 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. 55041).

A formal 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 21, 1985 at 9:15 A.M., with all briefs to be submitted by June 11, 1985. Petitioner appeared by Leon H. Gilden, Esq. The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether Article 31-B of the Tax Law is violative of the United States and/or New York State Constitutions.

II. Whether the Audit Division properly reduced petitioner's reported original purchase price for certain premises by \$177,494.63.

FINDINGS OF FACT

1. Petitioner, Lafayette Gardens Terrace Co. ("Lafayette"), a partnership, was the owner of rental income property, more specifically an apartment building located at 330-340 Haven Avenue, Borough of Manhattan, City of New York until

January 3, 1984, when such property was transferred by Lafayette to Infinity Corporation. The property was transferred at a gross consideration of \$2,770,000.00. Petitioner reported an original purchase price of \$2,006,578.25 for the property, consisting of an acquisition purchase price of \$1,696,105.84 plus capital improvements of \$310,472.41. Accordingly, petitioner reported a gain of \$763,421.75 and an anticipated tax under Tax Law Article 31-B ("gains tax") of \$76,342.18.

2. On October 6, 1983, the Audit Division issued to petitioner, in response to transferor and transferee questionnaires previously filed by such parties, a tentative assessment and return whereon petitioner's gain on transfer was increased to \$940,915.38 and the amount of gains tax due was increased to \$94,091.53. Provided in explanation of this increase was the following:

"[a]cquisition cost of the property, and capital improvements have been reduced by \$177,494.63. Items of personal property and routine maintenance are not considered capital improvements to the real property. Lobby furniture and portable equipment are not considered part of the real property, therefore, acquisition cost has been reduced accordingly."

3. Petitioner paid the \$94,091.53 figure presented by the Audit Division, and on April 27, 1984 filed a claim for refund thereof, which claim was denied by the Audit Division by a letter dated June 20, 1984. Petitioner protests this denial of its claim for refund, upon grounds hereinafter set forth.

4. The \$177,494.63 of disallowed items may be further subdivided as follows:

a) acquisition purchase price:	
portable equipment	\$ 43,430.79
lobby furniture	1,690.43
b) capital improvements:	
equipment and appliances	81,717.81
painting	50,655.60
	<u>\$177,494.63</u>

The category "portable equipment" under 4-a (above) includes stoves, refrigerators and sinks originally installed in the premises, while the category "equipment and appliances" under 4-b (above) includes replacement stoves, refrigerators and sinks installed by petitioner after acquisition of the premises. The category "painting" in 4-b (above) refers to painting of exterior areas of the premises such as window frames and sills and fire escapes and also to painting of public or common areas, but does not include interior painting of individual apartments.

5. The above-described items were capitalized and depreciated on petitioner's books rather than expensed, except in the case of painting, which charges were partly capitalized and partly expensed until approximately 1983 when, in view of selling the property, all painting was expensed directly. The stoves and refrigerators were the predominant items of equipment with sinks being a minor portion thereof. A specific breakdown of dollar amounts for stoves, refrigerators and sinks was not specified on the record.

6. Petitioner asserts that the tax in question violates standards of constitutionality, as follows:

"Article 31-B of the Tax Laws of the State of New York, prior to its amendment, is unconstitutional in that it is vague in its interpretation and applicability to existing State and/or Federal Tax statutes as a result of which it becomes arbitrary in its interpretation and incapable of enforcement; that the same results in double taxation; that the same is discriminatory and arbitrary in establishing a value as the basis for taxation; that the same is destructive in its application to the Real Estate industry and fails to render equal protection under both the United States Constitution and the Constitution of the State of New York."

7. Petitioner also maintains that the disallowance of items totalling \$177,494.63 was arbitrary, capricious and without basis in fact and law since such disallowance was done in violation of the statute and was contrary to existing definitions of what constitutes capital improvements.

8. The building sold by petitioner was constructed in or about 1951, and its apartments were subject to rent stabilization measures. Petitioner notes that upon installation of the types of items at issue, one may obtain a "capital improvement increase" thereby increasing rentals and, petitioner asserts, the saleable value of the premises and the ultimate gain derived on sale. Petitioner thus disputes exclusion of the items at issue from basis. Finally, with respect to painting costs, petitioner asserts that the building's proximity to the Hudson River necessitated frequent exterior painting in order to preserve the condition of the building.

CONCLUSIONS OF LAW

A. That for purposes of Article 31-B of the Tax Law, effective March 28, 1983, the term "original purchase price" was defined as "...the consideration (i) paid by the transferor to acquire the interest in the real property (ii)...; plus...the consideration by the transferor for any capital improvements to such real property..." [Tax Law §1440(5)].¹

B. That the items at issue do not constitute capital improvements to real property and the Audit Division properly disallowed such items in determining original purchase price. Regulations defining capital improvements had not been promulgated as of the date of the transfer in question. However, by their nature, it is clear that the items in question did not possess the characteristics which evidence an intention that they be permanently affixed to the real property when installed. Such items upon original installation, were termed by petitioner as "portable" equipment. Moreover, exterior painting and

1 Tax Law §1440(5) was amended, effective June 28, 1984, such that the definition of "original purchase price" was to be "...as determined under rules and regulations prescribed by the Tax Commission."

painting of common areas is in the nature of a repeated act of maintenance preserving the value of the premises rather than an installation adding to the value of such premises. Finally, a determination of what constitutes a capital improvement for purposes of enabling increases to rents in rent stabilized apartments is neither dispositive nor binding with respect to Article 31-B and a determination of original purchase price thereunder.


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

D. That the petition of Lafayette Gardens Terrace Co. is hereby denied and the denial of claim for refund of taxes paid under Tax Law Article 31-B is sustained.

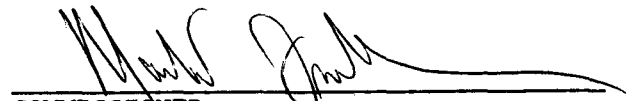
DATED: Albany, New York

OCT 30 1985

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER