

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions :  
of :  
Aaron Ziegelman & William Langfan : AFFIDAVIT OF MAILING  
for Revision of Determinations or for Refunds :  
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 3rd day of July, 1986, he/she served the within notice of Decision by certified mail upon Aaron Ziegelman & William Langfan the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Aaron Ziegelman & William Langfan  
c/o Chanales, Ziegelman & Kahan  
200 W. 57th St.  
New York, NY 10019

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 OF NEW YORK

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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 3rd day of July, 1986, he served the within notice of Decision by certified mail upon Seymour Kahan, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour Kahan  
200 W. 57th St., Suite 403  
New York, NY 10019

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  
3rd day of July, 1986.

David Parchuck

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

Aaron Ziegelman & William Langfan  
c/o Chanales, Ziegelman & Kahan  
200 W. 57th St.  
New York, NY 10019

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:  
Seymour Kahan  
200 W. 57th St., Suite 403  
New York, NY 10019

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
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AARON ZIEGELMAN AND WILLIAM LANGFAN	:	DECISION
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for Revision of Determinations or for Refunds	:	
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Property Transfers under Article 31-B of the	:	
Tax Law.	:	

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Petitioners, Aaron Ziegelman and William Langfan, c/o Chanales, Ziegelman and Kahan, 200 West 57th Street, New York, New York 10019, filed petitions for revision of determinations or for refunds of tax on gains derived from certain real property transfers under Article 31-B of the Tax Law (File Nos. 59871, 59872, 59873 and 59874).

A consolidated 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 February 4, 1986 at 9:15 A.M., with all briefs to be submitted by February 18, 1986. Petitioners appeared by Chanales, Ziegelman and Kahan, CPAs (Seymour Kahan, CPA). The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

#### ISSUE

Whether penalties asserted against petitioners 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 February 5, 1985, following an audit, the Audit Division issued to petitioners Aaron Ziegelman and William Langfan four notices of determination of tax due under Tax Law Article 31-B ("Gains Tax"). These notices pertained

to audits of four different entities, specifically 108 Street Corp., 2610 Ocean Parkway Corp., 9611 Owners Corp. and Fair Field Views, Inc., each of which was a cooperative housing corporation.

2. In the case of each of the above corporations, transfer of the underlying real estate from petitioners (in partnership), as the sponsors, to the cooperative corporations, occurred prior to the March 29, 1983 effective date of Tax Law Article 31-B. In addition, a number of individual apartment units were transferred to their individual purchasers prior to such effective date.

3. The audit of the four corporations' books and records occurred when the Audit Division, which was in the process of auditing another of petitioners' cooperatives, was advised by petitioners' accountants of the existence of these four corporations and determined that such corporations should be audited.

4. The result of the audit was a determination of tax due on those transfers of individual apartment units which occurred after the effective date of Tax Law Article 31-B, together with the imposition of interest. Penalties were also imposed for failure to file returns and timely pay gains tax due in connection with such individual unit transfers.

5. Petitioners do not contest the tax and interest asserted as due and, in fact, have paid such amounts. Likewise, petitioners admit that returns required by Tax Law Article 31-B were not filed nor was any tax paid in connection with the subject transfers. However, petitioners do contest the imposition of penalties, noting that the gains tax was, at the time of these transfers, a relatively new tax about which there were many questions and uncertainties. Further, petitioners assert reliance upon the advice of their attorneys that all transfers under these cooperative conversion plans were exempt from gains tax since the underlying real property was, in each case, transferred by

petitioners, as sponsors, to the cooperative corporations prior to the effective date of Tax Law article 31-B. Finally, petitioners maintain the auditor orally advised them, at the time they submitted to audit, that penalties would not be imposed.

6. The notices of determination dated February 5, 1985 assert penalties due in the following amounts:

<u>Entity</u>	<u>Penalty Amount</u>
108 Street Corp.	\$37,916.20 <sup>1</sup>
2610 Ocean Parkway Corp.	6,456.30
9611 Owners Corp.	14,090.76
Fair Field Views, Inc.	7,368.40

7. Although petitioner Aaron Ziegelman is licensed as a certified public accountant, he does not actively and directly practice as an accountant. Rather, both he and petitioner William Langfan have been involved in the real estate industry for the past several years.

#### 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 returns were not timely filed and tax due was not timely paid in connection with the transfers in question. In excuse of these failures, petitioners assert their reliance on advice of counsel and note the then-relative newness and attendant uncertainties surrounding the gains tax. Petitioners further allege that advice from the Audit Division thereon

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1 Listed erroneously on the notice as interest, but stipulated at hearing to be penalty.

was unclear and, finally, point to their voluntary submission to audit upon statements by the auditor that penalties would be abated. By contrast, there is no evidence of written requests by petitioners, or their attorneys, for guidance from the Audit Division regarding individual unit transfers pursuant to a cooperative plan. However, Audit Division written guidelines concerning the gains tax treatment of cooperative conversions had been issued and were available to the public.<sup>2</sup> Given the availability of such written guidelines, it is a reasonable expectation that petitioners should have become aware of their responsibilities for filing and payment prior to the time of the audit herein. However, there was no filing, payment or other action by petitioners until an audit was undertaken, indicating that absent an audit, petitioners' failure to file and pay would have continued indefinitely. Finally, an auditor's advice or lack thereof as to whether or not penalty will be imposed or, subsequently, abated is not relevant as to why petitioner failed to timely file returns and pay tax in the first instance. Accordingly, in view of all the facts and circumstances presented, it does not appear that petitioners' failure to file and pay was occasioned as the result of reasonable cause, and penalty was properly imposed.

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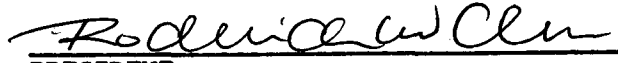
2 For example, Department of Taxation and Finance Publication 588 "Questions and Answers - Gains Tax on Real Property Transfers" was issued in August, 1983. Question and Answer number 20 in such publication, as well as Technical Services Bureau Memorandum 83-2(R), issued on August 22, 1983, discuss the taxability of and set forth the filing requirements for transferors of cooperative units.

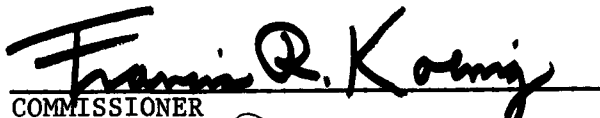
C. That the petitions of Aaron Ziegelman and William Langfan are hereby denied and the penalties imposed for failure to timely file returns and pay tax when due are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

JUL 03 1986

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER