

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Palmer Equities :
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. :

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

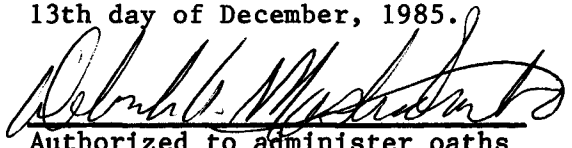
Connie A. Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, that she is over 18 years of age, and that on the 13th day of December, 1985, she served the within notice of Decision by certified mail upon Palmer Equities, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

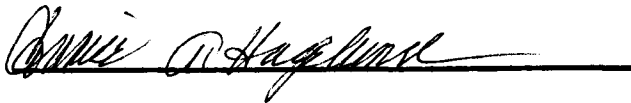
Palmer Equities
c/o Steinberg & Pokoik
575 Madison Ave.
New York, NY 10022

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
13th day of December, 1985.


Authorized to administer oaths
pursuant to Tax Law section 174



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

December 13, 1985

Palmer Equities
c/o Steinberg & Pokoik
575 Madison Ave.
New York, NY 10022

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: Petitioner's Representative
Michael L. Steinberg
Paskus, Gordon & Hyman
45 Rockefeller Plaza
New York, NY 10111
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PALMER EQUITIES	:	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, Palmer Equities, c/o Steinberg & Pokoik, 575 Madison Avenue, New York, New York 10022, 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. 56777).

Petitioner, by its duly authorized representative Paskus, Gordon & Mandel, Esqs. (Michael L. Steinberg, Esq.), has waived a hearing and submitted its case for decision based on the entire file. After due consideration the Commission renders the following decision.

ISSUES

I. Whether the transfer of real property by an owner/sponsor to a cooperative apartment corporation pursuant to a cooperative plan prior to the enactment date of Tax Law Article 31-B, rather than the subsequent transfers of individual apartment units, is the determinative event for purposes of taxation under Article 31-B.

II. Whether the Audit Division properly calculated tax due under Article 31-B by utilizing petitioner's original purchase price paid for the real property and the total amount of consideration anticipated under the cooperative

plan, including any mortgage indebtedness, with such amounts being apportioned among the individual cooperative apartment units as sold.

FINDINGS OF FACT

1. Petitioner, Palmer Equities, a partnership, purchased premises located at 609, 611 and 615 Palmer Road, Yonkers, New York pursuant to a contract of sale dated September 6, 1979. These premises, consisting of apartment buildings, were transferred by petitioner, as owner/sponsor, to a cooperative apartment corporation ("609-611-615 Owners Corp.") on or about June 1, 1981, pursuant to a cooperative plan.

2. On or about March 22, 1984 petitioner transferred the 338 shares of 609-611-615 Owner's Corp. which were allocated to cooperative apartment number 804 located at 615 Palmer Road, Yonkers, New York, together with petitioner's interest, as tenant, in the proprietary lease to such apartment number 804, to Lawrence and Jane Lentino.

3. On April 18, 1984, petitioner paid under protest \$4,772.63, representing the amount of real property transfer gains tax ("gains tax") shown as due on a Tentative Assessment and Return dated April 6, 1984, pertaining to the March 22, 1984 transfer of apartment number 804 (See Finding of Fact "2").

4. On May 11, 1984, the Audit Division received from petitioner a claim for refund of the aforementioned gains tax paid, which claim was denied in full by the Audit Division by a letter to petitioner dated August 17, 1984.

5. Petitioner, in its refund claim, sets forth three bases upon which refund is sought, summarized as follows:

a.) that, since the transfer of the real property by petitioner, as owner/sponsor, to the cooperative apartment corporation on June 1, 1981 occurred prior to the enactment date of Tax Law Article 31-B, such transfer was not subject to gains tax and, in turn, subsequent transfers of each individual apartment unit (such as the transfer of apartment 804 noted herein) are not subject to tax.

b.) that, in the event petitioner's assertion above is rejected, it is the original purchase price of the cooperative apartment units being sold by petitioner rather than the original purchase price of the real property which should be used in computing the amount of gains tax.

c.) that, again assuming petitioner's assertion "a" above is rejected, no part of the mortgage indebtedness covering the real property owned by the cooperative apartment corporation should be added to the amount of consideration received by petitioner upon the transfer of individual cooperative apartment units.

6. The cooperative apartment corporation took title to the premises from petitioner subject to a mortgage in the amount of \$3,481,902.89, which amount (as apportioned per apartment unit) the Audit Division asserts constitutes part of the total consideration received by petitioner.¹

CONCLUSIONS OF LAW

A. That section 1441 of the Tax Law, 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.

B. That Tax Law section 1142 provides, in part, as follows:

"In the case of a transfer pursuant to cooperative or condominium plan, the date of transfer shall be deemed to be the date on which each cooperative or condominium unit is transferred. For purposes of calculating the amount of tax due in each such transfer, an apportionment of the original purchase price of the real property and total consideration anticipated under such plan shall be made for each such cooperative or condominium unit." (Emphasis added).

C. That it is not the transfer of real property from petitioner to the cooperative apartment corporation, but rather the transfer of cooperative shares (and the proprietary lease) by petitioner to the individual unit purchasers (the sale of each individual unit) which is the operative event for purposes of

¹ For purposes of calculating the tax amount noted herein (\$4,772.63), an unpaid mortgage balance of \$3,284,365.15 was used. It does not appear to be contested that the proper balance should be \$3,481,902.89.

the imposition of liability for gains tax [Tax Law § 1442; Martin J. Mayblum, et. al. v. Chu, 109 A.D.2d 782 (Second Dept., March 11, 1985) mot. for lv. to app. den., N.Y.2d (June 10, 1985)].

D. That calculation of the amount of gains tax due on each unit transfer is based on an apportionment to each such unit of the original purchase price paid for the real property and the total consideration anticipated under the plan. (Tax Law § 1442). "Original purchase price of the real property" plainly means petitioner's purchase price when it originally acquired the premises. Finally, total consideration anticipated includes not only the price paid by the individual unit transferees but also includes the unit's apportioned share of mortgage indebtedness. Accordingly, the Audit Division's method of calculating gains tax due on the transfer in issue, by utilizing petitioner's original purchase price paid for the real property and by including as part of consideration received the mortgage indebtedness, with both as apportioned to the individual unit in question, was proper.

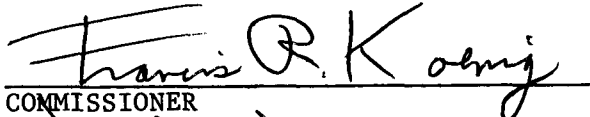
E. That the petition of Palmer Equities is hereby denied and the denial of refund claim, dated August 17, 1984, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 13 1985


PRESIDENT


COMMISSIONER


COMMISSIONER