

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

Sanjaylyn Co. :

AFFIDAVIT OF MAILING

for Revision of a Determination or for 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 23rd day of December, 1986, he/she served the within notice of Decision by certified mail upon Sanjaylyn Co. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sanjaylyn Co.
142 Sancome St.
San Francisco, CA 94104

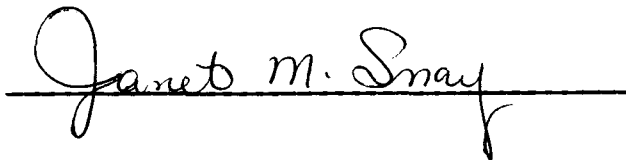
and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

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
23rd day of December, 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

Sanjaylyn Co. :

AFFIDAVIT OF MAILING

for Revision of a Determination or for Refund :
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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 23rd day of December, 1986, he served the within notice of Decision by certified mail upon Howard Dean, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

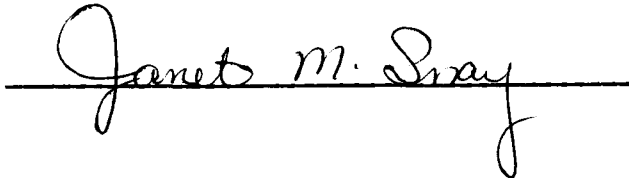
Howard Dean
280 N. Central Ave.
Hartsdale, NY 10530

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
23rd day of December, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



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

December 23, 1986

Sanjaylyn Co.
142 Sancome St.
San Francisco, CA 94104

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 Dean
280 N. Central Ave.
Hartsdale, NY 10530

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SANJAYLYN 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, Sanjaylyn Co., 142 Sancome Street, San Francisco, California, 94104, 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. 67259).

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 August 6, 1986 at 9:15 A.M., with all briefs to be submitted by September 22, 1986. Petitioner appeared by Howard Dean, Esq. The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the Audit Division properly aggregated the consideration received by petitioner upon its transfers of three contiguous properties, such that the aggregate consideration received was in excess of one million dollars thereby subjecting such transfers to tax under Tax Law Article 31-B.

FINDINGS OF FACT

1. Petitioner, Sanjaylyn Co., was the owner of three separate parcels of real property, contiguous to each other and located in Jamaica, New York. Each of these parcels, known individually as 167-14 146th Road ("Parcel A"), 146-27

167th Street ("Parcel B") and 146-35 167th Street ("Parcel C"), houses a one story warehouse and office building. The premises are collectively referred to herein as the properties. Petitioner acquired title to the properties as follows:

- Parcel A (167-14 146th Rd.) - petitioner acquired title from Shirley Rubin and Alan R. Salamon, as Trustees, on May 11, 1979 at a purchase price of \$631,000.00;
- Parcel B (146-27 167th St.) - petitioner acquired title from Shirley Rubin and Alan R. Salamon, as Trustees, on September 19, 1977 at a purchase price of \$328,000.00;
- Parcel C (146-35 167th St.) - petitioner acquired title from Daniel Rubin on December 15, 1971 at a purchase price of \$307,500.00.

2. Each of the three properties was leased to a different tenant by petitioner during its period of ownership of the properties. Petitioner made no structural alterations to any of the properties, and did not change the square footage or make any additions to any of the properties.

3. As noted, the three properties were purchased by petitioner on different dates, and were purchased for investment purposes. At hearing, petitioner showed that the properties had separate utilities, insurance policies, real property tax assessments and certificates of occupancy.

4. In 1985, the properties were placed by petitioner in the hands of Sholom and Zuckerbrot Realty Corp ("the broker") as broker to sell the properties. A separate one page brokerage agreement between petitioner and the broker was executed for each of the three properties. These agreements, dated August 14, 1985, reflect different selling prices for each property, with different brokerage commissions payable on each property based upon the different selling price of each parcel.

5. Advertisements to sell the properties as placed by the broker indicated that the properties could be purchased either separately or together as a package. One such (undated) listing reveals selling prices, including a "package price," as follows:

| | | |
|---------------|---|----------------|
| Parcel A | - | \$1,500,000.00 |
| Parcel B | - | 870,000.00 |
| Parcel C | - | 660,000.00 |
| Package Price | - | 3,000,000.00 |

6. On September 10, 1985, petitioner executed three separate contracts of sale with Porterfield Realty Corp. or assigns, each being a separate contract pertaining to one of the three properties. The contract pertaining to Parcel A called for a purchase price of \$950,000.00, that pertaining to Parcel B called for a purchase price of \$700,000.00 and that pertaining to Parcel C called for a purchase price of \$600,000.00.

7. In addition to the aforementioned contracts, petitioner and Porterfield Realty Corp. also executed on September 10, 1985 an "Agreement in Event of Default". This agreement provided in part that a breach by either party under any one of the three contracts would constitute a breach under all three contracts. This agreement further provided, at paragraph 5, as follows:

"Seller covenants that it will on the closing pay any taxes due by reason of the Tax on Gains Derived From Certain Real Property Transfers pursuant to Article 42 (b) [sic] of the Tax Law. In addition, Seller agrees that it shall pay such gains tax as the State taxing authority assesses by reason of said authority treating the sale of the three parcels as one transaction. In addition, Seller agrees that it shall advise the State taxing authorities (by statement containing the items set forth on the annexed instrument) of the fact that such three parcels are being sold by it to the same purchaser for an aggregate price in excess of \$1,000,000.00, and that, pursuant to this agreement, a default under any of the contracts is deemed a default under all of the contracts. Seller agrees that the form of letter so advising the State Tax Department of the foregoing shall be subject to the approval (which shall not be unreasonably withheld) of the Purchaser. Seller shall be entitled to make payment of the gains tax, if any, under protest. Seller shall indemnify and hold Purchaser harmless from any payments, penalties, interest or taxes which may be payable by Purchaser by reason of any gains tax payable by Seller in

connection with the foregoing transactions. The provisions of this paragraph shall survive the closings of title."

8. Transfer of title from petitioner to Porterfield Realty Corp. (ultimately to the North Shore Corporation via assignment) occurred at closings held on different dates for each parcel, to wit Parcel A on October 7, 1985, Parcel B on November 27, 1985 and Parcel C on December 5, 1985.

9. As noted, the August 14, 1985 brokerage agreements listed commission amounts based on selling prices as follows:

| | <u>Commission Amount</u> | (based on) | <u>Selling Price</u> |
|----------|--------------------------|------------|----------------------|
| Parcel A | \$42,222.00 | | \$950,000.00 |
| Parcel B | 31,111.00 | | 700,000.00 |
| Parcel C | 26,667.00 | | 600,000.00 |

The actual selling prices received were these amounts (see Finding of Fact "6"). There was no evidence produced detailing the nature of the negotiations or the method by which such selling prices were ultimately arrived at with Porterfield Realty Corp.

CONCLUSIONS OF LAW

A. That Tax Law §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. However, Tax Law §1443(1) provides that no tax shall be imposed if the consideration is less than one million dollars.

B. That Tax Law §1440(7) provides, in part, as follows:

"'Transfer of real property' means the transfer or transfers of any interest in real property by any method....Transfer of real property shall also include partial or successive transfers... pursuant to an agreement or plan to effectuate by partial or successive transfers a transfer which would otherwise be included in the coverage of this article...."

C. That the evidence warrants the conclusion that the transactions were properly aggregated and subjected to gains tax by the Audit Division. Each of


the properties was operated for the common purpose of generating rental income. Moreover, the properties were offered for sale either individually or as a package, and ultimately all three parcels were sold to one purchaser, within a relatively close period of time. Petitioner did use three separate contracts, three different closing dates and different selling prices for the properties. However, notwithstanding such factors, the language of the brokerage ads, the sale of the properties to a common purchaser and, significantly, the language of the agreement in event of default (see Finding of Fact "7") all point to a package sale. All of the foregoing, coupled with a lack of specifics as to the negotiations with the ultimate purchaser of the three parcels, supports the conclusion of a package sale properly subject to aggregation and, as aggregated, in excess of the million dollar threshold and subject to tax (see Matter of Louis Bombart, State Tax Commn., Dec. 13, 1985).

D. That the petition of Sanjaylyn Co. is hereby denied and the denial of claim for refund is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 23 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

GainsREQUEST FOR BETTER ADDRESS

| | | | |
|--------------|---|---|-------------------------------|
| Requested by | Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227 | UnTax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227 | Date of Request 1/9/87 |
|--------------|---|---|-------------------------------|

Please find most recent address of taxpayer described below; return to person named above.

| | |
|------------------------|--|
| Social Security Number | Date of Petition Dec - 12/23/86 |
| Name | Sanjaylyn Co. |
| Address | 142 Sancome St. San Francisco, CA 94104 |

Results of search by Files

| | |
|---|---------------------|
| <input type="checkbox"/> New address: | N/7 1/12/87 nfw |
| <input type="checkbox"/> Same as above, no better address | |
| <input type="checkbox"/> Other: | Attempted not known |

| | | |
|-------------|---------|----------------|
| Searched by | Section | Date of Search |
| | | |

PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER

TA-26 (7/85)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
W. A. Harriman Campus
ALBANY, N.Y. 12227

CERTIFIED

P 319 117 237

MAIL

Sanjaylyn Co.
142 Sancome St.
San Francisco, CA 94104

RECEIVED
JAN 10 1987



Postage paid

Robert Hunter
40

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

December 23, 1986

Sanjaylyn Co.
142 Sancome St.
San Francisco, CA 94104

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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 Dean
280 N. Central Ave.
Hartsdale, NY 10530

STATE OF NEW YORK

STATE TAX COMMISSION

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| SANJAYLYN CO. | : | DECISION |
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D. That the petition of Sanjaylyn Co. is hereby denied and the denial of claim for refund is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

DEC 23 1986


PRESIDENT


COMMISSIONER


COMMISSIONER