

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Sea Crest Motel, Inc. :

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 9th day of June, 1987, he/she served the within notice of decision by certified mail upon Sea Crest Motel, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

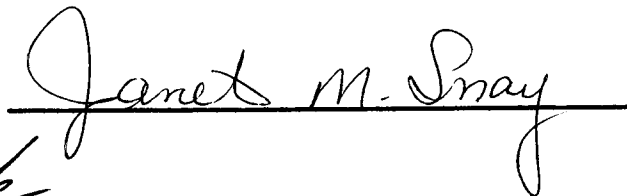
Sea Crest Motel, Inc.  
P.O. Box 500  
Amagansett, NY 11930

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  
9th day of June, 1987.

  
Authorized to administer oaths  
pursuant to Tax Law section 174



STATE OF NEW YORK

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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 9th day of June, 1987, he served the within notice of decision by certified mail upon Laurence Karst, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Laurence Karst  
Laventhol & Horwath  
919 Third Avenue  
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 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  
9th day of June, 1987.

David Parchuck  
Authorized to administer oaths  
pursuant to Tax Law section 174

Janet M. Snay

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

June 9, 1987

Sea Crest Motel, Inc.  
P.O. Box 500  
Amagansett, NY 11930

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:  
Laurence Karst  
Laventhol & Horwath  
919 Third Avenue  
New York, NY 10022

STATE OF NEW YORK

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In the Matter of the Petition

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SEA CREST MOTEL, INC.

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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DECISION

Petitioner, Sea Crest Motel, Inc., P.O. Box 500, Amagansett, New York 11930, 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. 65816).

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 January 14, 1987 at 1:30 P.M., with all briefs to be submitted by March 4, 1987. Petitioner appeared by Laventhol & Horwath (Laurence Karst, CPA). The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

#### ISSUE

Whether legal fees incurred by petitioner on the sale of certain real property are properly allowable as part of petitioner's original purchase price for such property thereby reducing the gain subject to tax under Tax Law Article 31-B.

FINDINGS OF FACT

1. In January 1984, petitioner, Sea Crest Motel, Inc., transferred certain real property located in New York State. It is undisputed that this transfer was subject to tax under Tax Law Article 31-B ("gains tax").

2. On May 2, 1985, petitioner filed a Claim for Refund of Real Property Transfer Gains Tax in the amount of \$7,200.00. This claim was premised upon petitioner's assertion that brokerage fees of \$2,000.00 and legal expenses of \$70,000.00 were mistakenly omitted from petitioner's claimed original purchase price for the property.

3. By letter dated October 16, 1985, the Audit Division allowed the brokerage fees as claimed by petitioner, but denied the allowance of legal fees. Accordingly, the refund claim was allowed to the extent of \$200.00, but was otherwise denied. The denial of inclusion of the \$70,000.00 in legal fees is what remains at issue in this proceeding.

4. There is no dispute as to the actual expenditure of the above-noted \$70,000.00 amount for legal fees. Petitioner asserts that the legal fees are a customary expense in the sale of property, that such fees reduce the economic gain on the sale and thus should be allowed.

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.

B. That Tax Law § 1440.5, as in effect on the January 1984 date of the transfer in question, provided, in part, as follows:

"'Original purchase price' means the consideration (i) paid by the transferor to acquire the interest in the real property or (ii) in the case of property acquired through gift or inheritance, the consideration paid by the last transferor who paid consideration to

acquire the interest in the real property; plus in both cases the consideration by the transferor for any capital improvements made to such real property (including in the case of clause (ii) above, those by the last transferor who paid consideration) prior to the date of transfer."

C. That Tax Law § 1440.5 as above was repealed by Laws of 1984 (ch 900, § 3), with new subdivision 5 added in its place and providing, in relevant part, as follows:

"(a) 'Original purchase price' means the consideration paid or required to be paid by the transferor; (i) to acquire the interest in real property, and (ii) for any capital improvements made or required to be made to such real property, including solely those costs which are customary, reasonable, and necessary, as determined under rules and regulations prescribed by the tax commission, incurred for the construction of such improvements. Original purchase price shall also include the amounts paid by the transferor for any customary, reasonable and necessary legal, engineering and architectural fees incurred to sell the property and those customary, reasonable and necessary expenses incurred to create ownership interests in the property in cooperative or condominium form, as such fees and expenses are determined under rules and regulations prescribed by the tax commission." (Emphasis added.)

D. That as the above-quoted sections reveal, it was the amendment to subdivision 5 of Tax Law § 1440 by which the meaning of original purchase price was expanded to allow inclusion therein of customary, reasonable and necessary expenses relating to:

- a.) the construction of capital improvements;
- b.) legal, architectural and engineering fees incurred to sell the property; and
- c.) expenses incurred to create ownership interests in cooperative or condominium form.

This new subdivision 5 was made effective as of September 4, 1984 and was not, unlike certain other portions of Laws of 1984 (ch 900), made retroactive to prior periods.

E. That the legal fees at issue were not properly includible as part of the original purchase price when the property was transferred. It is presumed

that the legislature acts with a purpose, and here that purpose was to allow, inter alia, legal fees incurred on a sale as part of the original purchase price. As the memorandum accompanying passage of Chapter 900 indicates, the change to allow, inter alia, legal fees was a non-retroactive substantive change (see McKinney's 1984 Session Laws of New York, pp. 3458, 3461).

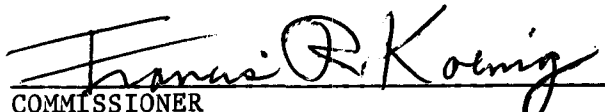
F. That the petition of Sea Crest Motel, Inc. is hereby denied and the Audit Division's denial of petitioner's claim for refund in the reduced amount of \$7,000.00 is sustained.

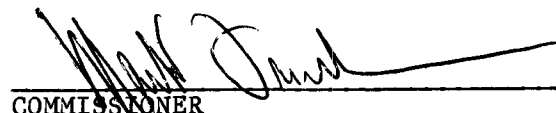
DATED: Albany, New York

STATE TAX COMMISSION

JUN 09 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER