

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Shefa Realty Associates : 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/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 15th day of September, 1986, he/she served the within notice of Decision by certified mail upon Shefa Realty Associates the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Shefa Realty Associates
P.O. Box 221
Brooklyn, NY 11211

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
15th day of September, 1986.

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

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Shefa Realty Associates : AFFIDAVIT OF MAILING

for Revision of a Determination or for Refund :
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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 15th day of September, 1986, he served the within notice of Decision by certified mail upon Meyer Lieber, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Meyer Lieber
1241 44th St.
Brooklyn, NY 11219

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
15th day of September, 1986.

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

September 15, 1986

Shefa Realty Associates
P.O. Box 221
Brooklyn, NY 11211

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:
Meyer Lieber
1241 44th St.
Brooklyn, NY 11219

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

SHEFA REALTY ASSOCIATES

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.

Petitioners, Shefa Realty Associates, P.O. Box 221, Brooklyn, New York 11211, 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. 61452).

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 March 6, 1986 at 1:15 P.M., with all briefs to be submitted by April 17, 1986. Petitioner appeared by Meyer Lieber, CPA. The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the penalty asserted against petitioner 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 March 5, 1985, following an audit, the Audit Division issued to petitioner, Shefa Realty Associates, a Notice of Determination of Tax Due Under Tax Law Article 31-B ("gains tax"), indicating gains tax due in the amount of \$90,132.00, plus penalty and interest. This notice pertained to an audit concerning Mayfair Tenants Corp. ("Mayfair"), a cooperative housing corporation

to which petitioner, as sponsor under a cooperative conversion plan, had transferred certain real property located in Queens County, New York. This transfer of the real property from petitioner, as sponsor, to Mayfair occurred on or about June 11, 1984. However, the deed was held in escrow by petitioner's attorneys until August 26, 1984, the date upon which petitioner was issued a Statement of No Tax Due by the Audit Division in connection with its transfer of the real property, as sponsor, to Mayfair.

2. Petitioner determined that since the underlying property had been transferred to Mayfair after the March 28, 1983 gains tax effective date, the sales of individual apartment units at Mayfair would be transfers subject to gains tax. Accordingly, based on data supplied by petitioner's certified public accountant, petitioner's attorney prepared gains tax computations for such unit transfers. Petitioner's accountant's review of the Mayfair escrow account indicated that gains tax, as computed, had been paid.

3. In or about September of 1984, while accounting for petitioner's acquisition of a different parcel of property, the funds for which purchase came from the Mayfair cooperative proceeds, petitioner's accountant discovered that the above-noted gains tax monies were used in payment for this purchase and had not, as was believed, been paid in connection with transfers of the Mayfair cooperative apartment units.

4. The main explanation offered for the petitioner's failure to timely file and pay is this apparent misunderstanding between petitioner's accountant and attorney in this matter.

5. Petitioner admits that returns required under Tax Law Article 31-B were not timely filed nor was gains tax timely paid in connection with the subject transfers of apartment units. Petitioner does not contest the tax and

interest determined to be due on audit and, in fact, has paid such amounts. However, petitioner does contest the imposition of the penalty for late filing and payment, asserting reliance upon the advice of its certified public accountant and its attorney, and noting the circumstances and misunderstanding previously described. Further, petitioner notes that upon learning of its error, the Audit Division was contacted shortly thereafter to schedule the audit and determine petitioner's gains tax liability.

6. Petitioner's two principals earn their livelihood through real estate transactions in and around the New York City metropolitan area.

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 this article shall be subject to a penalty of ten per centum of the amount of tax due plus an interest penalty of two per centum of such amount for each month of delay or fraction thereof after the expiration of the first month after such return was required to be filed or such tax became due, such interest penalty shall not exceed twenty-five per centum in the aggregate. 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 and such interest penalty."

B. That it is not disputed that returns were not timely filed and tax due was not timely paid in connection with the individual apartment unit transfers in question. The excuse advanced for such failure, namely misunderstanding between petitioner's accountant and attorney, does not warrant abatement of the penalty.

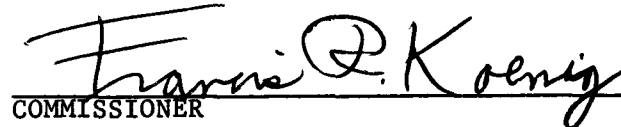
C. That the petition of Shefa Realty Associates is hereby denied and the penalty imposed for failure to timely file returns and pay tax when due is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER