

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
2 Bronxville Road Realty Co. : 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 30th day of June, 1986, he/she served the within notice of Decision by certified mail upon 2 Bronxville Road Realty Co. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

2 Bronxville Road Realty Co.
1523 Central Park Avenue
Yonkers, NY 10710

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
30th day of June, 1986.

David Parchuck

Janet M. Snay
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
2 Bronxville Road Realty Co. : 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 30th day of June, 1986, he served the within notice of Decision by certified mail upon Marshall S. Belkin, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Marshall S. Belkin
Belkin, Natale & Oxman
1523 Central Park Avenue
Yonkers, NY 10710

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
30th day of June, 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

June 30, 1986

2 Bronxville Road Realty Co.
1523 Central Park Avenue
Yonkers, NY 10710

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:
Marshall S. Belkin
Belkin, Natale & Oxman
1523 Central Park Avenue
Yonkers, NY 10710

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
2 BRONXVILLE ROAD REALTY 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, 2 Bronxville Road Realty Co., 1523 Central Park Avenue, Yonkers, New York 10710, 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. 62138).

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 5, 1986 at 1:15 P.M., with briefs to be submitted by March 18, 1986. Petitioner appeared by Belkin, Natale & Oxman, Esqs. (Marshall S. Belkin, Esq., of counsel). 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 April 1, 1985, following an audit, the Audit Division issued to petitioner, 2 Bronxville Road Realty Co., a Notice of Determination of Tax Due under Tax Law Article 31-B ("Gains Tax"), indicating gains tax due in the amount of \$62,206.00, plus penalty and interest. This notice pertained to an audit concerning 2 Bronxville Road Owners, Inc. ("2 Bronxville Road"), a

cooperative housing corporation to which petitioner, as sponsor under a cooperative conversion plan, had transferred certain real property.

2. On or about the time of the transfer of the real property from petitioner, as sponsor, to 2 Bronxville Road, requisite transferor and transferee questionnaires with respect to gains tax had been submitted to the Audit Division in connection with this then-pending transfer.

3. In response to the aforementioned questionnaires, the Audit Division had issued to petitioner on June 13, 1983 a Statement of No Tax Due in connection with the transfer of the real property to 2 Bronxville Road.

4. A July 16, 1984 Audit Division audit of 2 Bronxville Road revealed that fifty-one individual cooperative apartment units at 2 Bronxville Road had been transferred by petitioner to various individual purchasers. Petitioner had neither filed returns nor paid tax in connection with any of these fifty-one individual unit transfers. The Audit Division determined tax due on such transfers in the aggregate amount of \$62,206.00, plus interest. Penalty was also imposed for failure to file returns and pay tax due.

5. Petitioner does not contest the tax and interest determined to be due and, in fact, has paid such amounts. Likewise, petitioner admits that returns required by Tax Law Article 31-B were not timely filed in connection with any of the individual transfers. However, petitioner does contest the imposition of the penalty for late filing and payment, pointing to the fact that the gains tax was, at the time of these transfers, a relatively new tax about which there were many questions and uncertainties. Petitioner asserts a lack of familiarity with the tax and its requirements with respect to filings, and notes that upon audit petitioner made an honest effort to promptly file and pay the amount of tax and interest determined. Finally, petitioner also notes that at the time

of the audit, the auditor advised that if the matter was resolved penalties would be waived.

6. The April 1, 1985 Notice of Determination reflects that payment of the tax and interest was made by petitioner, and that the amount of penalty due was \$19,533.00.

CONCLUSIONS OF LAW

A. That Tax Law section 1446.2 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 was not timely remitted in connection with the fifty-one transfers in question.

In excuse of its failures petitioner notes the then relative newness and attendant uncertainties surrounding the gains tax. There is no evidence of written requests by petitioner 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.¹ Given the availability of such written guidelines, it is a reasonable expectation that

1 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.

petitioner should have become aware of its responsibilities for filing and payment prior to the time of the audit herein. However, there was no filing, payment or other action by petitioner until an audit was undertaken, indicating that absent an audit, petitioner's 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 petitioner's failure to file and pay was occasioned as the result of reasonable cause, and penalty was properly imposed.

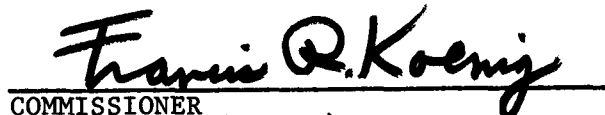
C. That the petition of 2 Bronxille Road Realty Co. is hereby denied and the penalty imposed for failure to timely file returns and pay tax when due is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 30 1986


PRESIDENT


COMMISSIONER


COMMISSIONER