

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Village Tenth 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 29th day of April, 1986, he/she served the within notice of Decision by certified mail upon Village Tenth Co. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Village Tenth Co.
2051 Flatbush Avenue
Brooklyn, NY 11234

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
29th day of April, 1986.

Daniel J. Ranelli
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

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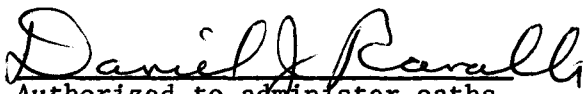
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 29th day of April, 1986, he served the within notice of Decision by certified mail upon Harold Asen, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

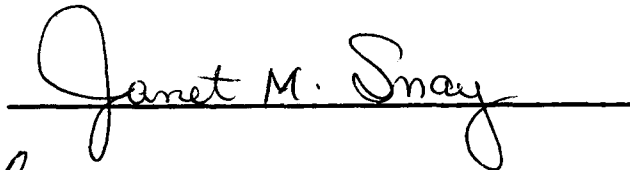
Harold Asen
2051 Flatbush Avenue
Brooklyn, NY 11234

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
29th day of April, 1986.


Authorized to administer oaths
pursuant to Tax Law section 174



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

April 29, 1986

Village Tenth Co.
2051 Flatbush Avenue
Brooklyn, NY 11234

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:
Harold Asen
2051 Flatbush Avenue
Brooklyn, NY 11234

STATE OF NEW YORK

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In the Matter of the Petition	:	
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of	:	
	:	
VILLAGE TENTH 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, Village Tenth Co., 2051 Flatbush Avenue, Brooklyn, New York 11234, 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. 59561).

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 February 5, 1986 at 2:45 P.M. Petitioner appeared by Harold Asen, Partner. The Audit Division appeared by John P. Dugan, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether certain expenditures made by petitioner for air conditioners, refrigerators and venetian blinds constituted capital improvements to real property owned by petitioner.

FINDINGS OF FACT

1. On August 27, 1984, petitioner, a partnership, filed a claim for refund of Real Property Transfer Gains Tax ("Gains Tax") seeking a refund of gains tax paid in the amount of \$2,767.22. This refund claim was premised upon petitioner's assertion that air conditioners, refrigerators and venetian blinds

installed by petitioner in a building it owned constituted capital improvements to realty.

2. In 1969, petitioner purchased real property located at 13-19 East 10th Street in the Borough of Manhattan, New York upon which was situated an apartment building ("the premises") with 22 apartment units.

3. Petitioner completely gutted the interior of the building and rebuilt it such that the number of apartment units was increased 36. As part of the rebuilding, petitioner installed the air conditioners, refrigerators and venetian blinds noted in the subject refund claim. In turn, as the rebuilding was completed, petitioner rented the various apartment units.

4. In April, 1983, petitioner, as sponsor, transferred ownership of the building to a cooperative corporation pursuant to a plan of cooperative conversion. Thereafter, as individual cooperative apartment units were transferred, petitioner paid gains tax, as required, on a per unit basis.

5. In the determination of gains tax due, the Audit Division disallowed, as part of petitioner's claimed original purchase price for the premises, petitioner's costs for the air conditioners, refrigerators and venetian blinds on the basis that such items were not capital improvements to the premises.

6. Prior to the hearing and upon additional evidence supplied by petitioner as to the method of installation and affixation, the air conditioners were determined to be capital improvements, their cost was included in original purchase price and the part of the refund claim pertaining thereto was granted and paid (with interest). At the hearing, petitioner conceded that the venetian blinds did not constitute capital improvements. Accordingly, the portion of the refund claim pertaining thereto is no longer at issue. Thus, the sole remaining item at issue is whether the refrigerators installed by petitioner constituted

capital improvements to real property which should have been included as part of petitioner's original purchase price for the premises.

7. The refrigerators were installed by petitioner as the building was occupied by tenants between May 21, 1975 and August 14, 1975. They are plugged into and operate on standard household electrical current. There is a separate electrical outlet and circuit for the refrigerator in each apartment.

8. It is petitioner's position that an apartment is not complete in terms of habitability without a refrigerator, that removal of the refrigerator from an apartment leaves a void or vacant space in the kitchen and that since the refrigerators were purchased and installed by petitioner in each apartment as part of the rebuilding of the premises, such refrigerators should be considered capital improvements to the premises and allowed as part of the original purchase price.

9. Each of the items originally claimed by petitioner as capital improvements, specifically the air conditioners, refrigerators and venetian blinds, were carried as capital expenditures on petitioner's books and were depreciated on its tax returns.

CONCLUSIONS OF LAW

A. That for purposes of Article 31-B of the Tax Law, effective March 28, 1983, the term "original purchase price" was defined as "...the consideration (i) paid by the transferor to acquire the interest in the real property (ii)...; plus...the consideration by the transferor for any capital improvements to such real property..." [Tax Law §1440(5)].

B. That the refrigerators at issue do not constitute capital improvements to real property and the Audit Division properly disallowed such items in the determination of petitioner's original purchase price. Regulations defining

capital improvements had not been promulgated as of the date of the transfer in question. However, by their nature, it is clear that household refrigerators do not possess the characteristics which would support a claim that upon installation they were intended to be permanently affixed to the real property. Rather, they are household appliances readily capable of removal without damage to either themselves or to the premises (see Matter of LaFayette Gardens Terrace Co., State Tax Comm., October 30, 1985). Finally, carrying certain items on one's books as capital items, and claiming depreciation thereon, does not, of itself, establish that such items are capital improvements under Tax Law Article 31-B.


C. That the petition of Village Tenth Co. is hereby denied and the Audit Division's denial of petitioner's claim for refund is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

APR 29 1986


PRESIDENT


COMMISSIONER


COMMISSIONER

