





STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino

~~MEMBER OF THE STATE TAX BOARD~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**August 21, 1974**

**Crossway LaGuardia Motor Inn  
c/o United National Corporation  
745 Fifth Avenue  
New York, New York 10022**

**Gentlemen:**

Please take notice of the **DETERMINATION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **1138 and 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**L. Robert Leisner**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
UNITED NATIONAL CORPORATION d/b/a :  
CROSSWAYS LaGUARDIA MOTOR INN : DETERMINATION  
for a Hearing to Review a Determination :  
or a Denial of a Refund of Sales and Use :  
Taxes under Articles 28 and 29 of the :  
Tax Law for the Period March 1, 1968 :  
through May 31, 1969. :

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United National Corporation, d/b/a Crossways LaGuardia Motor Inn, filed an application under sections 1138 and 1250 of the Tax Law for a hearing to review a determination issued under date of December 17, 1971, of sales taxes in the amount of \$10,514.21 plus penalty and interest of \$3,604.96 for a total of \$14,119.77, due under Articles 28 and 29 of the Tax Law for the period March 1, 1968 through May 31, 1969.

A hearing was held on June 15, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The applicant was represented by its treasurer, Stuart Davidson and by Stanley Myers. The Sales Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq. The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case are (a) the computation of the tax on room occupancy imposed by section 1105(8) of the Tax Law where the applicant claims that some of his receipts are from permanent residents as defined in section 1101(c)(5) of the Tax Law and (b) the valuation of personal property subject to tax upon a sale of a motel.

FINDINGS OF FACT

1. United National Investors Corporation operates 41 properties including a motel located at Ditmars Boulevard, 100th Street and 23rd Avenue in Queens, New York and near to LaGuardia Airport. This had been acquired by applicant on October 10, 1968, from a former subsidiary corporation, the U.I. Realty Corp. The motel had 135 rooms. It was not profitable.

2. The audit disallowed deductions of \$10,063.00 from receipts. This reduction represents receipts from room occupants who allegedly stayed for over 90 days. This figure represents 1.935% of the reported taxable receipts. Since, however, a permanent resident might pay only \$4.00 a night instead of \$20.00, which a permanent resident would pay, the amount deducted represents a ratio of room occupancy for permanent residents of about 9%.

3. The applicant's computations are based upon detailed daily reports prepared by the motel manager and submitted to the corporate office. Said report indicates the number of permanent occupants but does not list their names and former addresses. The individual records of transactions with occupants were not available at the time of the audit. Those records had been stored in the basement of another motel owned by applicant and had been destroyed by flooding.

4. The auditor estimated that other motels in the suburban New York area have permanent occupant ratios of from 5% to 15%.

5. On or about May 31, 1969, the applicant sold the motel to the Scharf Realty Company, a partnership composed of Asher Scharf, Leon Scharf and David Scharf. Reputedly the purchasers were buying the motel for conversion into a senior citizens home.

6. The contract of sale provided for the sale of all fixtures and articles of personal property but it did not allocate the price between real and personal property. It further contained a provision that all sales taxes payable in connection with the sale will be paid by the purchaser and this provision survives the closing.

7. The purchaser valued the personal property on its books as \$100,000.00. This may have represented a high estimate for purposes of depreciation on Federal income tax returns.

8. The purchase price was \$50,000.00 above an outstanding mortgage of \$1,529,414.00 and represented a loss of \$86,529.00 from book value. The book value was \$1,665,943.00 divided between realty of \$1,516,035.00 and personal property of \$149,908.00. The personal property had been depreciated by about 25% of its value.

9. The audit finds a value for the personal property transferred as \$149,908.41 and computed a tax on that figure.

10. The applicant believes that his total loss on the sale should be attributed to the personal property. For this purpose, he deducts a loss of \$98,143.00 from the book value of the personalty to arrive at a value of \$51,765.00. Applicant has finished some evidence that the cost of furnishing motel rooms runs from \$419.00 to \$547.00 a room. For 135 rooms, the maximum cost would be \$73,845.00. The evidence is in the form of letters from the managers of other motels owned by applicant.

#### CONCLUSIONS OF LAW

A. The deductions taken on the returns for permanent residents will be allowed. While the failure to preserve underlying records cannot be condoned, the amount taken as a deduction appears reasonable under all the circumstances.

B. The value of the personal property transferred upon sale of the motel will be set at \$100,000.00. This figure is between the highest figure based on book value and the lowest figure based on estimates of replacement value. Since it is the figure set by the purchaser on his books and the purchaser is liable under the contract to pay the tax, it is not inappropriate.


C. Penalty and interest will be waived to the extent they exceed 6% per annum.

DETERMINATION

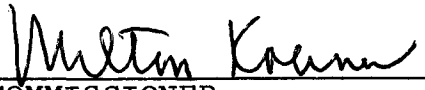
The determination under review will be revised to be \$6,996.90 plus interest of \$1,896.08 to December 20, 1973, plus further interest as provided in section 1145(a) of the Tax Law.

DATED: Albany, New York  
August 21, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER