

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
YOUR HOST OF ITHACA, INC. and:  
TRIPHAMMER DEVELOPMENTS CO., INC.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~(CERTIFIED)~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~Year(s)~~ Period  
March 15, 1971.

State of New York  
County of Albany

JANET MACK, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 19th day of August, 1975, she served the within  
Notice of ~~Decision~~ (or Determination) by ~~(certified)~~ mail upon Triphammer Developments  
Co., Inc. ~~(Representative of the)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Triphammer Developments Co., Inc.  
309 North Tioga Street  
Ithaca, New York 14850

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(Representative of the)~~  
~~XX~~ 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

19th day of August, 1975.

Mary L. Hoff

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

YOUR HOST OF ITHACA, INC. and  
TRIPHAMMER DEVELOPMENTS CO., INC.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~REGISTERED~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~TAXABLE~~ Period  
March 15, 1971.

State of New York  
County of Albany

JANET MACK, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 19th day of August, 1975, she served the within  
Notice of ~~Decision~~ (or Determination) by ~~(registered)~~ mail upon Your Host of Ithaca, Inc.

~~(representative of)~~ the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Your Host of Ithaca, Inc.  
c/o Wilson Cleveland Hotels  
Sheraton Plaza

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~of~~ petitioner herein and that the address set forth on said wrapper is the last  
known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

19th day of August, 1975.

Mary Greff

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

YOUR HOST OF ITHACA, INC. and  
TRIPHAMMER DEVELOPMENTS CO., INC.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY ~~CERTIFIED~~ MAIL

For a Redetermination of a Deficiency or  
a Refund of Sales and Use  
Taxes under Article(s) 28 and 29 of the  
Tax Law for the ~~XXXXXX~~ Period  
March 15, 1971.

State of New York  
County of Albany

JANET MACK, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 19th day of August, 1975, she served the within  
Notice of ~~XXXXXX~~ (or Determination) by ~~(XXXXXX)~~ mail upon Treman & Clynes

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Treman & Clynes  
300 Seneca Building  
P.O. Box 580

Ithaca, New York 14850  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

19th day of August, 1975.

Mary Shoff

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
**James H. Tully, Jr.**  
~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**DATED:** Albany, New York  
**August 19, 1975**

**Your Host of Ithaca, Inc.  
c/o Wilson Cleveland Hotels  
Sheraton Plaza  
Rock Island, Illinois**

**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  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
**James H. Tully, Jr.**  
~~STATE TAX COMMISSION~~ PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214-A  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655  
MR. LEISNER 457-2657  
MR. COBURN 457-2896

**DATED:** Albany, New York  
**August 19, 1975**

**Triphammer Developments Co., Inc.**  
**309 North Tioga Street**  
**Ithaca, New York 14850**

**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

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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|   |   |               |
|---|---|---------------|
| In the Matter of the Application        | : |               |
| of                                      | : |               |
| YOUR HOST OF ITHACA, INC. and           | : |               |
| TRIPHAMMER DEVELOPMENT CO., INC.        | : | DETERMINATION |
| for a Revision of a Determination or    | : |               |
| for Refund of Sales and Use Taxes under | : |               |
| Articles 28 and 29 of the Tax Law for   | : |               |
| the Period March 15, 1971.              | : |               |

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Applicants, Your Host of Ithaca, Inc., c/o Wilson Cleveland Hotels, Sheraton Plaza, Rock Island, Illinois, and Triphammer Development Co., Inc., 309 North Tioga Street, Ithaca, New York 14850, applied for a revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 15, 1971.

The case was submitted for decision on the material contained in the file. The taxpayers were represented by Treman & Clynes and the Sales Tax Bureau was represented by Saul Heckelman, Esq.

ISSUE

Where Triphammer Development Co., Inc., a secured lender, arranged for Inns-Ithaca, Inc. to take a secured business from Your Host of Ithaca, Inc. did a bulk sale to Triphammer Development Co., Inc. occur?

FINDINGS OF FACT

1. The taxpayer, Inns-Ithaca, Inc. and Your Host of Ithaca, Inc., timely filed New York State sales and use tax returns for the period March 15, 1971, and paid a sales tax of \$2,700.00 on a bulk sale.

2. A Notice of Determination of sales and use taxes and penalties for the period, March 15, 1971, was issued on November 5, 1971, against Your Host of Ithaca, Inc. and Triphammer Development Co., Inc. under Notice No. 90,767,678.

3. The taxpayer applied for a revision of the determination of the deficiencies in sales tax.

4. Triphammer Development Co., Inc. is solely a real estate corporation and owner of the premises and improvements of the motor inn in question. This motor inn was rented to Your Host of Ithaca, Inc. for operation of a motel, restaurant and bar. As security "Host" gave a chattel mortgage of its business equipment and chattels to Triphammer on August 12, 1965.

5. In 1970, one of the principals of Host became ill and Host failed to pay the rent. Triphammer insisted on the rent and Host sought unsuccessfully to sell the business.

6. The parties mutually agreed that Host would abandon the furniture, fixtures and the liquor license used in operating the motel, restaurant and bar. They did execute an assignment of accounts receivable on assignment of certain license agreements and an abandonment executed under date of March 30, 1971. At approximately the same time, Inns-Ithaca, Inc. was found to take over the operation.

7. The actual abandonment was from Host to Triphammer, and Triphammer sold to Inns-Ithaca although a bill of sale for One Dollar actually ran from Host to Inns-Ithaca to meet a technical requirement of the State Liquor Authority in order to transfer the liquor license.

8. Inns-Ithaca Inc. has paid the sales tax on the consideration; namely, \$45,000.00.

9. The Sales Tax Bureau then asserted that the transfer from Host to Triphammer constituted a bulk sale within the meaning of section 1141(c) of Article 28 of the Tax Law and asserted a tax on the same assets.

#### CONCLUSIONS OF LAW

A. Prudential Insurance Co. of America v. McGoldrich, 256 App. Div. 205 (affd. 281 NY 595) holds that a mortgage foreclosure is not a sale if the mortgagee takes title, but reserved decision if a third party bought the property at the foreclosure sale.

In this case if Triphammer took title, there was an immediate resale.

The sale to Inns-Ithaca, Inc. and the transfer of title and possession to Inns-Ithaca, Inc. and the payment of the sales tax on the \$45,000.00 consideration constituted the taxable event in this case. In a foreclosure default sales taxes are not collected twice on the same property. Repossessions and resales are special cases and double sales taxes should not be collected on the same property. Section 1132(e) Tax Law. (Cancellation and return of property).

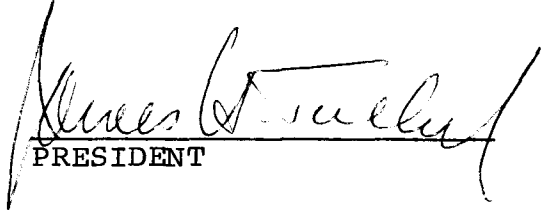


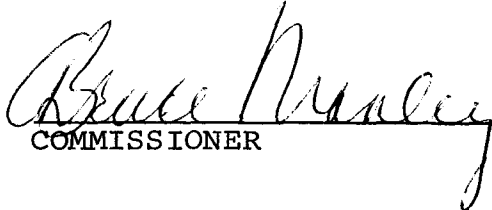
B. The tax on \$45,000.00 having been paid by Inns-Ithaca, Inc., the ultimate purchaser, there is no sales tax, penalty or interest due from the applicant under Notice No. 90,767,678.

DATED: Albany, New York

August 19, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER