

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Central Willow Hotel, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 6/1/74-8/31/75. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of January, 1981, he served the within notice of Decision by mail upon Central Willow Hotel, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Central Willow Hotel, Inc.  
c/o D. Moskowitz  
165-17 65th St.  
Flushing, NY 11365

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 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 January, 1981.

*Cornie A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Central Willow Hotel, Inc. :

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for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Sales & Use Tax :  
under Article 28 & 29 of the Tax Law  
for the Period 6/1/74-8/31/75. :

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of January, 1981, he served the within notice of Decision by mail upon John A. Mitchell the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. John A. Mitchell  
58-35 College Point Blvd.  
Flushing, NY 11355

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 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 January, 1981.

Cornelia A. Hagelund

Jay Vredenburg

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

January 30, 1981

Central Willow Hotel, Inc.  
c/o D. Moskowitz  
165-17 65th St.  
Flushing, NY 11365

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) 1138 & 1243 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws 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  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
John A. Mitchell  
58-35 College Point Blvd.  
Flushing, NY 11355  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
CENTRAL WILLOW HOTEL, INC.	:	DECISION
	:	
for Revision of a Determination or for	:	
Refund of Sales and Use Taxes under	:	
Articles 28 and 29 of the Tax Law for the	:	
Period June 1, 1974 through August 31,	:	
1975.	:	

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Petitioner, Central Willow Hotel, Inc., c/o David Moskowitz, 165-17 65th Street, Flushing, New York 11365, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period June 1, 1974 through August 31, 1975 (File No. 21766).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 17, 1980 at 1:15 P.M. Petitioner appeared by John A. Mitchell, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether petitioner's purchase of real estate and personal property constituted a bulk sale of the business assets of M & M Hotels, Inc. in accordance with the meaning and intent of section 1141(c) of the Tax Law.

II. Whether petitioner is liable for sales taxes due from M & M Hotels, Inc. pursuant to the bulk sale provisions of section 1141(c) of the Tax Law.

III. Whether the Audit Division accurately determined the sales tax liability of M & M Hotels, Inc. for the period June 1, 1974 through August 31, 1975.

FINDINGS OF FACT

1. On February 18, 1977, the Audit Division received a Notification of Sale, Transfer or Assignment in Bulk from petitioner Central Willow Hotel, Inc. regarding its purchase of the Hotel Washington from M & M Hotels, Inc. It also gave notice of the sale of the Hotel Columbia to Columbia Southwind Hotel, Ltd. from M & S Hotels, Inc. Said notification indicated December 30, 1976 as the scheduled date of sale and listed the total sales price of the real estate and personal property for both transactions as \$150,000.00. The total sales price of the furniture and fixtures was \$5,000.00 and tax was paid thereon of \$200.00. The notification was signed by David Moskowitz as president of both Central Willow Hotel, Inc. and Columbia Southwind Hotel, Ltd.

2. On April 27, 1977, the Audit Division notified Central Willow Hotel, Inc. (petitioner herein) as purchaser in the bulk sale and M & M Hotels, Inc. (seller) of a possible claim for New York State and local sales and use taxes due.

3. On July 26, 1977, the Audit Division issued notices of determination and demand for payment of sales and use taxes due against petitioner and the seller for taxes due of \$330.48, plus penalty and interest of \$183.48, for a total of \$513.96. The taxes due were determined based on a field audit of the seller's available books and records for the period June 1, 1974 through August 31, 1975. Petitioner was held liable for the taxes determined due from the seller pursuant to section 1141(c) of the Tax Law.

4. During the period at issue, M & M Hotels, Inc. operated the Hotel Washington located in Sharon Springs, New York. The hotel is adjacent to the Hotel Columbia, operated by M & S Hotels, Inc. It is open from the latter part of June through Labor Day and is used when there are no vacancies at the

Hotel Columbia and to house the employees of both M & M Hotels, Inc. and M & S Hotels, Inc. The business ceased operations at the end of the 1975 season.

5. The accountant for M & M Hotels, Inc. provided the Audit Division with the following books and records for audit: general ledger, cash receipts and disbursements journal, Federal tax returns and sales tax returns. Guest registration cards and purchase invoices were not available for examination to enable the Audit Division to verify the entries recorded in the cash receipts and disbursements journals. The Audit Division contacted petitioner to obtain information regarding the business operations of the Hotel Washington. Petitioner provided the following pertinent data: 40 rooms, 25 percent occupancy rate and average weekly charge of \$140.00 per person. Based on this information, the Audit Division determined gross sales of \$22,195.00 or an increase of \$8,262.00 over reported gross sales. (It should be noted that the estimated gross sales should have been \$44,800.00 or an increase of \$30,867.00. The Audit Division, however, erroneously combined the estimated sales of the Hotel Washington for one year with the estimated sales of the Hotel Columbia when computing a percentage of increase. The Hotel Columbia is operated by a separate corporation.)

6. On December 14, 1977, at an informal conference held at the Bronx District Office, M & M Hotels, Inc. produced guest registration cards purporting to be all cards for the audit period for both the Hotel Columbia and the Hotel Washington. The same registration cards were used by both hotels. The cards totaled \$271,574.00 as compared to sales reported on sales tax returns of \$290,830.00. Additionally, they were not in numerical sequence. Thus, the Audit Division concluded that the registration cards were incomplete and did not adjust the tax previously determined.

At the conference, M & M Hotels, Inc. argued that the average percentage of occupancy was 10 percent rather than 25 percent and that the average weekly charge was \$121.00 per person.

7. Petitioner argued that the information given to the Audit Division with respect to occupancy percentage was erroneous in that such percentage was applicable only to the time it was requested (July 19, 1977) and was not meant to be construed as a seasonal average. Petitioner maintained that at the time it gave the Audit Division the information, it was just beginning its first season in operation, and therefore, was in no position to give an accurate average for the entire season.

8. Petitioner contended that it purchased real estate and personal property, not the business, and therefore, such transaction was not a bulk sale.

9. Petitioner acted in good faith at all times.

#### CONCLUSIONS OF LAW

A. That the real estate and personal property of M & M Hotels, Inc. were business assets and that the sale thereof constituted a bulk sale within the meaning and intent of section 1141(c) of the Tax Law.

B. That petitioner is liable for the taxes determined to be due from M & M Hotels, Inc. in accordance with provisions of section 1141(c) of the Tax Law.

C. That M & M Hotels, Inc. did not maintain sufficient books and records for the Audit Division to determine the exact amount of taxable sales; therefore, the Audit Division properly determined the amount of tax due from such information as was available and external indices, pursuant to section 1138(a) of the Tax Law.

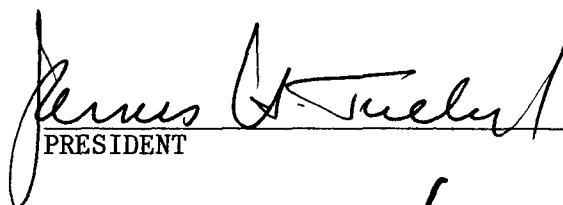
D. That the penalty and interest in excess of the minimum statutory rate imposed pursuant to section 1145(a) of the Tax Law are cancelled.

E. That the petition of Central Willow Hotel, Inc. is granted to the extent indicated in Conclusion of Law "D"; that the Audit Division is hereby directed to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued July 26, 1977; and that, except as so granted, the petition is in all other respects denied.

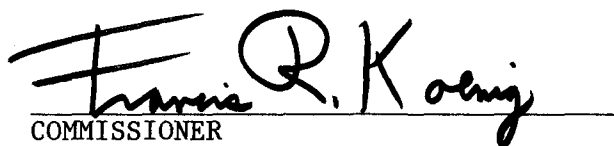
DATED: Albany, New York

STATE TAX COMMISSION

JAN 30 1981

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER