

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Forest Hill Motor Court :
: 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 6/1/76-5/31/79. :

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 14th day of August, 1981, he served the within notice of Decision by mail upon Forest Hill Motor Court, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

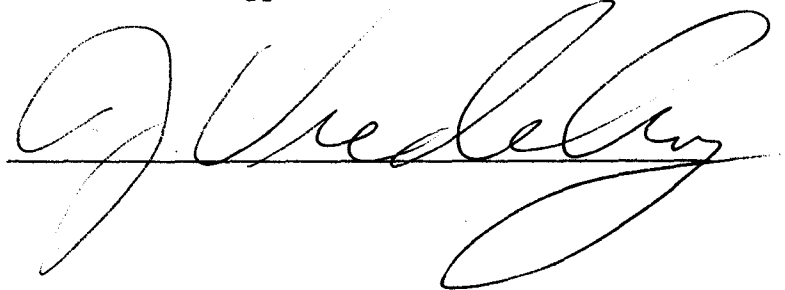
Forest Hill Motor Court
Box 461
Lake George, NY 12845

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
14th day of August, 1981.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Forest Hill Motor Court :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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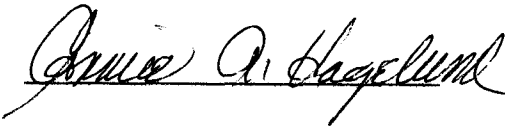
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 14th day of August, 1981, he served the within notice of Decision by mail upon Frank V. DeSantis the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

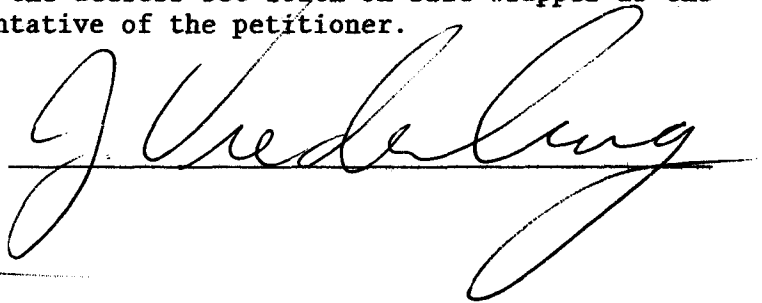
Frank V. DeSantis
Rehm, Krantz & DeSantis
175 Ottawa St.
Lake George, NY 12845

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
14th day of August, 1981.





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

August 14, 1981

Forest Hill Motor Court
Box 461
Lake George, NY 12845

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
Frank V. DeSantis
Rehm, Krantz & DeSantis
175 Ottawa St.
Lake George, NY 12845
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FOREST HILL MOTOR COURT	:	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, 1976	:	
through May 31, 1979.	:	

Petitioner, Forest Hill Motor Court, Box 461, Lake George, New York 12845, 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, 1976 through May 31, 1979 (File No. 27851).

On January 27, 1981, the petitioner advised the State Tax Commission in writing, that it desired to waive a small claims hearing and submitted the case to the State Tax Commission based on the entire record in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether petitioner's receipts from the rental of bungalows are subject to tax.

FINDINGS OF FACT

1. Petitioner, Forest Hills Motor Court, operated a motel, campgrounds and in addition rented bungalows which are detached from the motel units.
2. On September 6, 1979, as the result of a field audit, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and

Use Taxes Due against petitioner covering the period June 1, 1976 through May 31, 1979 for taxes due of \$5,329.39, plus penalty and interest of \$2,314.30, for a total of \$7,643.69.

3. On audit, the Audit Division determined additional sales and use taxes due of \$5,329.39, of which \$3,512.81 is attributable to petitioner's failure to collect tax on bungalow rentals. The remaining taxes are not at issue.

4. The Department of Taxation and Finance and petitioner stipulated to the following:

- a) The bungalows are located on the same premises as the motel, albeit some distance away.
- b) The bungalows are owned and operated by the taxpayer.
- c) The bungalows are only rented for periods of one week or more.
- d) The bungalows are completely furnished and include use of a television set.
- e) The bungalows have complete kitchen facilities and are supplied with pots, pans and all other kitchen appurtenances.
- f) The operator furnishes all utilities and linens and towels which he changes weekly.
- g) The operator cleans the bungalows weekly.

5. The bungalows are limited to single family occupancy. Petitioner does not provide maid, food or other common hotel services such as entertainment or planned activities for persons occupying bungalows.

6. The Audit Division took the position that since the bungalows are located on the premises of the motel, the receipts from such rentals are subject to tax under section 1105(e) of the Tax Law. Petitioner considered the receipts from bungalow rentals fall within the exclusion provided by 20 NYCRR 527.9(e)(5).

7. Petitioner acted in good faith at all times.

CONCLUSIONS OF LAW

A. That section 1105(e) of the Tax Law imposes a tax on receipts from the rent for every occupancy of a room or rooms in a hotel. 20 NYCRR 527.9(b)(1) defines the term hotel as a building or portion of it which is regularly used and kept open for the lodging of guests. The term hotel includes but is not limited to an apartment hotel, a motel, bungalow or cottage colony, boarding house or club, whether or not meals are served. Subsection (e)(5) of said regulation provides that a lessor of bungalows who rents bungalows which are furnished living units limited to single family occupancy is not the operator of a hotel and the rents for the occupancy of such bungalows are not taxable, provided:

- (i) No maid, food, or other common hotel services such as entertainment or planned activities are provided by lessor;
- (ii) The bungalows are not situated on the premises of a hotel, and
- (iii) The rental is for at least one week.

B. That since the bungalows are situated on the same premises as the motel, petitioner's receipts for the occupancy of such bungalows do not meet the necessary criteria set forth in Conclusion of Law "A" to exempt said receipts from the tax imposed by section 1105(e) of the Tax Law. Accordingly, petitioner's receipts from the rental of bungalows are subject to tax within the meaning and intent of section 1105(e) of the Tax Law and 20 NYCRR 527.9.

C. That the penalty is abated and interest shall be computed at the minimum statutory rate.

D. That the petition of Forest Hill Motor Court is granted to the extent indicated in Conclusion of Law "C"; that the Audit Division is hereby directed

to modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued September 6, 1979; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

AUG 14 1981

STATE TAX COMMISSION

James G. Tuckey
PRESIDENT

Thomas H. G. C.
COMMISSIONER

Frank R. Koenig
COMMISSIONER