

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
245 Central Park Associates

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  
11/15/76.

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon 245 Central Park Associates, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

245 Central Park Associates  
225 Central Park West  
New York, NY 10024

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  
21st day of August, 1981.

*Carmie A. Haglund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
245 Central Park Associates :

: 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 11/15/76.

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 21st day of August, 1981, he served the within notice of Decision by certified mail upon Jesse Krasnow the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jesse Krasnow  
Krasnow, Cohen, Gaft & Rubin  
380 Madison Ave.  
New York, NY 10017

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  
21st day of August, 1981.

*Bruno A. Haglund*

*J. Vredenburg*

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

August 21, 1981

245 Central Park Associates  
225 Central Park West  
New York, NY 10024

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  
Jesse Krasnow  
Krasnow, Cohen, Galt & Rubin  
380 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of  
245 Central Park Associates

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  
11/15/76.

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 245 Central Park Associates, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

245 Central Park Associates  
225 Central Park West  
New York, NY 10024

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.

*Ann A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
245 Central Park Associates :

: 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 11/15/76.

State of New York  
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Krasnow, Cohen, Gaft & Rubin  
380 Madison Ave.  
New York, NY 10017

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.

*Armin A. Haglund*

*J. Vredenburg*

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

August 14, 1981

245 Central Park Associates  
225 Central Park West  
New York, NY 10024

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  
Jesse Krasnow  
Krasnow, Cohen, Galt & Rubin  
380 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
245 CENTRAL PARK ASSOCIATES	:	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 November 15, 1976.	:	

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Petitioner, 245 Central Park Associates, 225 Central Park West, New York, New York 10024, 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 November 15, 1976 (File No. 23880).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 30, 1980 at 10:00 A.M. Petitioner appeared by Krasnow, Cohen, Gaft & Rubin (Jesse Krasnow, CPA). The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether the value ascribed by the Audit Division to furniture, fixtures and equipment, which were the subject of a bulk sale to petitioner, was proper.

II. Whether, if the value utilized by the Audit Division was proper and the sales tax thereon was correctly computed, petitioner is liable for the penalty imposed by section 1145 of the Tax Law.

FINDINGS OF FACT

1. On June 23, 1978, the Audit Division issued to petitioner, 245 Central Park Associates (as purchaser), a Notice of Determination and Demand for

Payment of Sales and Use Taxes Due, in accordance with subdivision (c) of section 1141 of the Tax Law, scheduled as follows:

<u>PERIOD</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
2/28/75	\$ 50.01	\$ 12.50	\$ 19.55	\$ 82.06
5/31/75	121.68	30.42	43.92	196.02
8/30/75	80.00	20.00	26.47	126.47
11/15/76	<u>37,288.24</u>	<u>8,239.95</u>	<u>6,748.42</u>	<u>52,276.61</u>
	\$37,539.93	\$8,302.87	\$6,838.36	\$52,681.16

On June 30, 1978, the seller remitted to the State Tax Commission a check in the amount \$404.55, in satisfaction of the sales and use tax liability prior to the bulk sale of November 15, 1976.

2. 245 Central Park Associates is a partnership, the members of which are Lefferts/Fore Associates, itself a real estate investment partnership, and Mr. Simon Katz. In March, 1975, petitioner, by Mr. Katz as nominee, contracted to purchase the Hotel Alden situated at 255 Central Park West, New York, New York, from Peter S. Bing and Alden Hotel Company, a partnership. At the time of contracting, the sellers were not the owners of the property but were plaintiffs in an action to foreclose a mortgage on the premises. The hotel had been a residential hotel and was in a deteriorated and semi-vacant condition. The mortgage in default was in a principal sum approximately \$400,000.00 in excess of the price established under the contract with petitioner; also, the purchase price was in part represented by a fifteen-year purchase money mortgage of \$2,100,000.00 commencing at an interest rate of four percent, a further recognition of the poor condition of the property and the necessity for renovation. On November 15, 1976, petitioner took title to the property.



3. Petitioner filed a Federal partnership return for 1976, at Schedule J of which return it took depreciation as follows:

<u>DESCRIPTION OF PROPERTY</u>	<u>DATE ACQUIRED</u>	<u>COST OR OTHER BASIS</u>	<u>DEPRECIATION ALLOWED OR ALLOWABLE IN PRIOR YEARS</u>	<u>LIFE OR RATE</u>	<u>DEPRECIATION FOR THIS YEAR</u>
fixtures, furniture and equipment	11/16/76	\$466,102.97	--	5 years	\$11,652.58

The majority of the aforementioned property constituted furniture and equipment within the rooms and suites of the hotel. Petitioner set the value thereof at \$450,000.00, which represented roughly \$1,000.00 of furniture per apartment. Petitioner had found it necessary and expedient to estimate the value, as it did not have the opportunity to inspect each apartment and the contents thereof prior to filing its 1976 return. No part of the purchase price of the hotel had been allocated to the furniture and equipment.

4. Petitioner undertook a major renovation of the hotel, by which process the building was converted to a Class A, or apartment, hotel. During the renovations, petitioner determined that the furniture was unsuitable for further use and scrapped it over the year 1977. Pertinent figures from Schedule J of petitioner's 1977 Federal partnership return were as follows:

<u>DESCRIPTION OF PROPERTY</u>	<u>DATE ACQUIRED</u>	<u>COST OR OTHER BASIS</u>	<u>DEPRECIATION ALLOWED OR ALLOWABLE IN PRIOR YEARS</u>	<u>LIFE OR RATE</u>	<u>DEPRECIATION FOR THIS YEAR</u>
	*	*	*		
furniture, fixtures and equipment	11/16/76	\$ 16,102.97	\$ 404.09	5 years	\$ 3,220.59
	11/16/76	450,000.00	11,248.49	5 years	45,000.00 *
			TOTAL DEPRECIATION		\$224,890.59
furniture, fixtures and equipment replaced by alteration and scrapped		(\$ 450,000.00)	(\$56,248.49)		393,751.51
less proceeds of scrap sales					(2,243.00)
			TOTAL LOSS		\$391,508.51
TOTALS		\$3,857,223.15			\$616,399.10
LESS AMOUNT OF DEPRECIATION CLAIMED IN SCHEDULES A AND H					\$616,399.10
BALANCE					-0-

\* Depreciation through 6/30/77

Because the scrapping occurred over the year, petitioner took depreciation for a six-month period (\$45,000.00) and also reduced its loss by proceeds realized upon scrap sales (\$2,243.00). Petitioner claimed total depreciation in the amount \$616,399.10 at Schedule H. Remaining in the still-occupied apartments was approximately \$15,000.00 of furniture.

5. During the course of the field audit, the sales tax examiner determined that sales tax in the amount \$37,288.24 was due on the bulk sale of furniture and fixtures, valued by petitioner on its Federal returns at \$466,102.97. Thereafter, on February 2, 1978, petitioner submitted to the Division a value for the property of \$40,000.00, upon which it was willing to pay tax; in petitioner's view, the property was more appropriately valued at liquidation or scrap value.

6. Petitioner did not notify the State Tax Commission of its proposed purchase of the hotel property prior to taking title.

CONCLUSIONS OF LAW

A. That the sale of the furniture, fixtures and equipment to petitioner was subject to tax pursuant to subdivision (a) of section 1105 of the Tax Law, which imposes sales tax upon "the receipts from every retail sale of tangible personal property, except as otherwise provided in this article [Article 28]".

B. That subdivision (c) of section 1141 states that when the purchaser fails to notify the State Tax Commission of a bulk sale at least ten days prior to taking possession of the subject of the sale, he shall be personally liable for payment to the state of any taxes theretofore or thereafter determined to be due the state from the seller, except that the purchaser's liability shall be limited to an amount not in excess of the purchase price or fair market value of the business assets sold, whichever is higher. Petitioner failed to comply with the notice requirements of this subdivision and is personally liable for payment of sales taxes on the assets sold, as well as any taxes still owed to the Commission by the seller. See generally Harcel Liquors v. Evsam Parking, 48 N.Y.2d 503 (1979).

C. That as to the furniture, fixtures and equipment, petitioner took a total depreciation deduction of \$59,873.17 for the period November 16, 1976 through June 30, 1977, and a loss deduction of \$391,508.51 for 1977, both of which deductions were computed on the value given said property by petitioner. Having received these tax advantages on its Federal returns, petitioner may not now argue that for New York State sales tax purposes, the value is excessive.

The Audit Division properly utilized the value of the property as set by petitioner, for the purpose of computing petitioner's tax liability under Article 28 of the Tax Law.

Petitioner has failed to sustain the burden of proof to show that the value of the furniture, fixtures and equipment was less than \$466,102.97.

Matter of 739 Food Corp. and Knapp Supermarket, State Tax Comm., October 6, 1978.

D. That the disparity between the value given the assets by petitioner and by the Audit Division was attributable to a difference in judgment; petitioner did not exhibit gross negligence or willfull intent to evade or disobey the tax statutes. Penalties and interest imposed upon petitioner in excess of the minimum rate as provided for under section 1145 of the Tax Law are accordingly cancelled.

E. That the petition of 245 Central Park Associates is granted to the extent indicated in Conclusion of Law "D"; that the notice and demand for payment issued on June 23, 1978 is to be modified accordingly; and that, except as so modified, the deficiency is in all other respects sustained.

DATED: Albany, New York

~~AUG 14 1981~~

AUG 21 1981

STATE TAX COMMISSION

*James B. Tuck*  
PRESIDENT

*Thomas H. L...*  
COMMISSIONER

*Francis R. Koenig*  
COMMISSIONER