

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

January 24, 1983

Hudson View Gardens, Inc.
116 Pinehurst Ave.
New York, NY 10033

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 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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Michael C. Devine
Keiffer & Hahn
68 William St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hudson View Gardens, 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 3/1/75-8/31/78. :

State of New York
County of Albany

Kathy Pfaffenbach, 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 24th day of January, 1983, she served the within notice of Decision by certified mail upon Hudson View Gardens, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hudson View Gardens, Inc.
116 Pinehurst Ave.
New York, NY 10033

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
24th day of January, 1983.

Kathy Pfaffenbach

Annice P. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Hudson View Gardens, 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 3/1/75-8/31/78.

State of New York
County of Albany

Kathy Pfaffenbach, 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 24th day of January, 1983, she served the within notice of Decision by certified mail upon Michael C. Devine the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael C. Devine
Keiffer & Hahn
68 William St.
New York, NY 10005

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
24th day of January, 1983.

Kathy Pfaffenbach

Ann R. Hagedorn

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW,
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

HUDSON VIEW GARDENS, 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 March 1, 1975
through August 31, 1978.

Petitioner, Hudson View Gardens, Inc., 116 Pinehurst Avenue, New York, New York 10033, 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 March 1, 1975 through August 31, 1978 (File No. 27887).

A small claims hearing was held before Judy M. Clark, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1982 at 1:15 P.M. Petitioner appeared by Michael C. Devine, Esq. The Audit Division appeared by Paul B. Coburn, Esq. (Kevin Cahill, Esq., of counsel).

ISSUE

Whether certain charges made by petitioner for overnight parking in a private driveway constituted receipts subject to the parking tax under sections 1212-A and 1107(c) of the Tax Law.

FINDINGS OF FACT

1. On March 27, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Hudson View Gardens, Inc. for the period March 1, 1975 through August 31, 1978. The Notice asserted

sales tax due of \$2,250.96, plus penalty and interest of \$1,010.48, for a total due of \$3,261.44.

2. Petitioner executed a consent to extend the period of limitation within which to issue an assessment for the period March 1, 1975 through February 28, 1978 to June 20, 1979.

3. Petitioner is an apartment cooperative registered with New York State for the collection of sales tax on its receipts from the use of the inter-community telephone system. Sales tax is also charged and remitted on repairs made to tenants' apartments. The community consists of approximately 353 units. No garages are located on petitioner's premises. A private semi-circular driveway within the confines of the property facilitates parking for a maximum of 35 cars. Parking is allowed in the driveway during daylight hours at no charge. At night, however, parking is prohibited in the driveway to allow easy access for emergency vehicles.

Since its incorporation in 1924, petitioner has instituted the following rule or facsimile pertinent to the issue:

"USE OF PRIVATE DRIVE

18. To maintain easy circulation in case of emergencies, parking is not allowed overnight. Any vehicle parked in the driveway at 3 A.M. will be considered as parked overnight and a charge of \$3.00 per car per night will be made for each violation of this rule. The charge will be considered an additional assessment under the Proprietary Lease.

Parking on sidewalk of the driveway or in the 'No Parking' areas at the entrance and exit of the driveway is prohibited at all times at the request of the New York City Fire Department who state that their apparatus cannot enter the driveway if the curved area 'No Parking' at the entrance and exit are obstructed. Violators of this Rule will be assessed \$5.00 each time this Rule is ignored, day or night."¹

¹ Excerpt from "House Rules" amended and revised September, 1976.

4. On audit, it was the Audit Division's position that the receipts obtained from the above assessments constituted fees for parking and as such were receipts subject to the New York City Parking Tax under section 1212-A of the Tax Law. The Audit Division held total receipts of \$37,516.00 subject to tax of \$2,250.96 for the audit period.

5. Petitioner argued that its activities do not include operation of a parking lot in that it is not engaged in parking, garaging or storing vehicles. Petitioner argued that its receipts were "fines" rather than parking fees to deter overnight parking in the private driveway. It kept its assessments for overnight parking in excess of the charges of surrounding garages available as a deterrent for its use overnight.

6. Petitioner assessed its tenants/owners on a monthly basis for charges to their account. The receipts at issue were billed as an "overnight parking assessment" on the monthly maintenance bill rendered.

7. Petitioner acted in good faith in its belief that the receipts at issue were not subject to tax. No other deficiencies were found on audit.

CONCLUSIONS OF LAW

A. That pursuant to sections 1212-A and 1107(c) of the Tax Law there shall be paid additional taxes at the rate of 6 percent on receipts from every sale of the service of providing parking, garaging or storing for motor vehicles by persons operating a garage (other than a garage which is part of premises occupied solely as a private one or two family dwelling), parking lot or other place of business engaged in providing parking, garaging or storing for motor vehicles.

B. That parking consists of the act of providing temporary storage for a motor vehicle, for a consideration, either directly or indirectly. (See ST-215.1 (5/70) New York City Parking Tax, Questions and Answers).

C. That although petitioner disapproves of overnight parking, it nevertheless charged its tenants \$37,516.00 for overnight parking. This charge constitutes receipts from parking subject to tax pursuant to sections 1212-A and 1107(c) of the Tax Law.

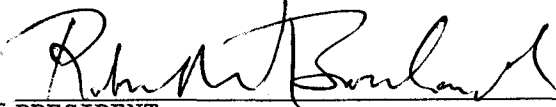
D. That the penalties and any interest above the minimum statutory rate are cancelled.

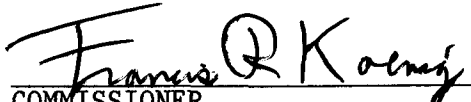
E. That the petition of Hudson View Gardens, Inc. is granted to the extent indicated in Conclusion "D" above; that the Audit Division is directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 27, 1979; and that, except as so granted, the petition is in all other respects denied.

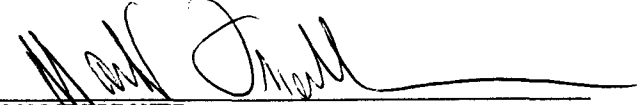
DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER

P 278 401 704
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

SENT TO		Hudson View Gardens, Inc.	
STREET AND NO.		116 Pinehurst Ave.	
P.O., STATE AND ZIP CODE		New York, NY 10033	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		SPECIAL DELIVERY	¢
		RESTRICTED DELIVERY	¢
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

PS Form 3800, Apr. 1976

P 278 401 705
RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
 NOT FOR INTERNATIONAL MAIL
 (See Reverse)

SENT TO		Michael C. Devine	
STREET AND NO.		Keiffer & Hahn	
P.O., STATE AND ZIP CODE		68 William St.	
POSTAGE		\$	
CONSULT POSTMASTER FOR FEES	OPTIONAL SERVICES	CERTIFIED FEE	¢
		SPECIAL DELIVERY	¢
		RESTRICTED DELIVERY	¢
	RETURN RECEIPT SERVICE	SHOW TO WHOM AND DATE DELIVERED	¢
		SHOW TO WHOM, DATE, AND ADDRESS OF DELIVERY	¢
		SHOW TO WHOM AND DATE DELIVERED WITH RESTRICTED DELIVERY	¢
		SHOW TO WHOM, DATE AND ADDRESS OF DELIVERY WITH RESTRICTED DELIVERY	¢
TOTAL POSTAGE AND FEES		\$	
POSTMARK OR DATE			

PS Form 3800, Apr. 1976