

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

May 27, 1983

Gary E. Slattery (Purchaser)
d/b/a Florida Hotel Corp.
c/o Black & Brownstein
98 Cutter Mill Rd.
Great Neck, NY 11021

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Daniel J. Brownstein
Black & Brownstein
98 Cutter Mill Rd.
Great Neck, NY 11021
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Gary E. Slattery (Purchaser)	:	
d/b/a Florida Hotel Corp.	:	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	:	
3/1/72 - 5/31/74.	:	

State of New York
County of Albany

David Parchuck, 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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Gary E. Slattery (Purchaser), d/b/a Florida Hotel Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gary E. Slattery (Purchaser)
d/b/a Florida Hotel Corp.
c/o Black & Brownstein
98 Cutter Mill Rd.
Great Neck, NY 11021

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
27th day of May, 1983.

David Parchuck

Annice A. Heyland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Gary E. Slattery (Purchaser)	:	
d/b/a Florida Hotel Corp.	:	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 3/1/72 - 5/31/74.	:	

State of New York
County of Albany

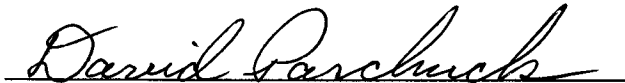
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 27th day of May, 1983, he served the within notice of Decision by certified mail upon Daniel J. Brownstein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

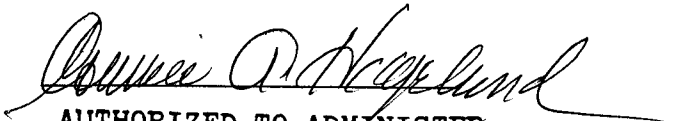
Daniel J. Brownstein
Black & Brownstein
98 Cutter Mill Rd.
Great Neck, NY 11021

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
27th day of May, 1983.




AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 1774

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GARY E. SLATTERY (PURCHASER)	:	
d/b/a FLORIDA HOTEL CORP.	:	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, 1972	:	
through May 31, 1974.	:	

Petitioner, Gary E. Slattery (Purchaser) d/b/a Florida Hotel Corp., c/o Black & Brownstein, 98 Cutter Mill Road, Great Neck, New York 11021, 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, 1972 through May 31, 1974 (File No. 17742).

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 September 22, 1982 at 1:15 P.M. Petitioner appeared by Black & Brownstein (Daniel J. Brownstein, Esq., of counsel). The Audit Division appeared by Paul B. Coburn, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether the purchase of real property by petitioner from William Wosneski d/b/a Florida Hotel constituted a bulk sale within the meaning and intent of section 1141(c) of the Tax Law.

FINDINGS OF FACT

1. William Wosneski owned realty at 68 Maple Avenue, Florida, New York, where he operated a bar and restaurant known as Florida Hotel.

2. On July 22, 1974, petitioner Gary E. Slattery purchased from William Wosneski the above business premises for the sum of \$35,000.00. Petitioner did not notify the State Tax Commission of said purchase.

3. The proposed contract of sale dated April 29, 1974 between William Wosneski and petitioner did not specify a separate sale amount for any furniture or equipment; however, it did contain the following provision:

"Included in this sale at no additional costs are all the fixtures, furniture and equipment presently on said premises owned by the seller and used in the bar and restaurant business."

4. Upon purchase of the above premises, petitioner Gary E. Slattery entered into a lease agreement with William Wosneski through December 31, 1974 whereby William Wosneski leased the premises known as the Florida Hotel, including the bar and grill and existing fixtures, furniture and equipment. Mr. Wosneski vacated the premises at the termination of the lease agreement.

5. Upon termination of the lease agreement between petitioner and William Wosneski, the premises remained vacant for an indeterminable time. Gary E. Slattery eventually applied for a liquor license and began operation of a bar at the premises under the name of Florida Hotel Corp.

6. On September 23, 1976, the Audit Division issued a Notice and Demand for Payment of Sales and Use Taxes Due against Gary E. Slattery and Florida Hotel Corp. (Purchaser) covering the period March 1, 1972 through May 31, 1974. The Notice asserted total tax due of \$4,508.49, plus penalty and interest. Said tax, penalty and interest had been determined due from William Wosneski. The Notice represented petitioner Gary E. Slattery's liability as purchaser under the provisions of section 1141(c) of the Tax Law.

7. Petitioner contended that the provisions of Tax Law §1141(c) did not apply to him because he merely purchased real property and did not intend to purchase a business or any furniture and fixtures. Petitioner argued that any furniture and fixtures included in the transaction were old and of very little value, if any.

8. Petitioner sold the business premises on March 23, 1976 to Higgins & McLaughlin, Inc.

9. Petitioner requested the abatement of penalty and interest.

CONCLUSIONS OF LAW

A. That section 1141(c) of the Tax Law provides, in summary, that whenever a person required to collect tax shall make a sale of his business assets, otherwise than in the ordinary course of business, the purchaser shall at least ten days before taking possession notify the Tax Commission by registered mail of the proposed sale. Whenever the purchaser shall fail to give notice as required or whenever the Tax Commission shall inform the purchaser that a possible claim for tax exists, any sums of money shall be subject to a first priority right and lien for any such taxes due from the seller. The liability of the purchaser 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.

B. That petitioner Gary E. Slattery purchased the business assets of William Wosneski for the sum of \$35,000.00. The fact that the contract of sale did not designate a sale price for furniture and fixtures is immaterial. The real property itself was a business asset of William Wosneski. Petitioner was, therefore, required to notify the State Tax Commission of said purchase.

Petitioner is consequently liable for the taxes determined due from William Wosneski under the provisions of section 1141(c) of the Tax Law.

C. That section 1145(a)(3) of the Tax Law states in part that "Unpaid penalties and interest may be determined, assessed, collected and enforced in the same manner as the tax imposed by this article." Therefore, petitioner was properly assessed for penalty and interest applicable to the seller in accordance with Tax Law §§ 1141(c) and 1145(a)(3). (Matter of Anna Manzella (Purchaser), State Tax Commission, November 20, 1981.)

D. That the petition of Gary E. Slattery (Purchaser) is denied, and the Notice and Demand for Payment of Sales and Use Taxes Due issued September 23, 1976 is sustained.

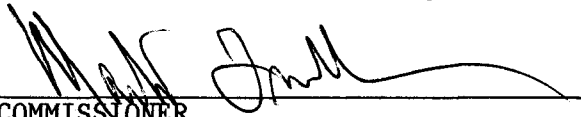
DATED: Albany, New York

MAY 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 481 207 847

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Gary E. Slattery (Purchased) d/b/a Florida Hotel Corp, c/o Black & Brownstein	
Street and No. 98 Cutter Mill Rd.	
P.O., State and ZIP Code Great Neck, NY 11021	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982

P 481 207 848

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to Daniel J. Brownstein Black & Brownstein	
Street and No. 98 Cutter Mill Rd.	
P.O., State and ZIP Code Great Neck, NY 11021	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
Return Receipt Showing to whom, Date, and Address of Delivery	
TOTAL Postage and Fees	\$
Postmark or Date	

PS Form 3800, Feb. 1982