

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

May 11, 1983

Staten Island Savings Bank
c/o Harry P. Doherty
81 Water Street
Staten Island, NY 10304

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
John G. Hall
P.O. Box 87
Staten Island, NY 10304
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Staten Island Savings Bank :
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 3/1/75-11/30/78. :

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 11th day of May, 1983, he served the within notice of Decision by certified mail upon John G. Hall the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

John G. Hall
P.O. Box 87
Staten Island, NY 10304

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
11th day of May, 1983.

David Parchuck

Connie R. 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	:	
STATEN ISLAND SAVINGS BANK	:	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 November 30, 1978.	:	

Petitioner, Staten Island Savings Bank, 81 Water Street, Staten Island, New York 10304, 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 November 30, 1978 (File No. 28359).

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 23, 1981, at 2:45 P.M. Petitioner appeared by John G. Hall, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUES

I. Whether the purchase and installation of wall-to-wall carpeting over a finished tile floor constituted a capital improvement to real property.

II. Whether the purchase and installation of a tellers' counter and partitions constituted a capital improvement to real property.

FINDINGS OF FACT

1. On August 20, 1979, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against Staten Island Savings Bank covering the period March 1, 1975 through November 30, 1978. The Notice was issued as a result of a field audit and asserted tax due on the unagreed

portion of the audit of \$2,652.32 plus penalties and interest of \$1,767.17 for a total of \$4,419.49.

2. Petitioner executed a consent to extend the period of limitation for assessment to December 20, 1979.

3. On audit, the Audit Division examined fixed assets purchased during the period March 1, 1975 through February 28, 1978. It held that purchases made on October 20, 1975 of a tellers' counter and partitions in the amount of \$15,550.00 were subject to use tax since it was not shown that the purchase constituted a capital improvement to real property. Also held subject to use tax was the purchase and installation of wall-to-wall carpeting totaling \$10,970.65 for the period under review. The Audit Division then projected the above findings over the period March 1, 1978 through November 30, 1978 and determined additional purchases subject to use tax of \$6,633.00. The Audit Division thereby determined additional tax due thereon of \$2,652.32.

4. At the hearing, the Audit Division stipulated that 50 percent of the wall-to-wall carpeting held subject to tax on audit constituted a capital improvement to real property and was not subject to tax under section 1105(c)(3) of the Tax Law because it was installed over an unfinished floor or sub-flooring.

5. The Audit Division further stipulated that the additional purchases held subject to use tax for the period March 1, 1978 through November 30, 1978 in the amount of \$6,633.00 should be deleted since petitioner did not make such purchases during that period.

6. During the period in issue, petitioner made renovations and an addition to one of its bank branches. In the new section of the branch, wall-to-wall carpeting was overlayed on concrete sub-flooring. On the older section of the building, wall-to-wall carpeting was placed over a tile floor which had been in

place in excess of 18 years. The condition of the old tiles was such that they required replacing if not covered by the carpeting. Rather than expend an additional sum to tear up the old tiles, matched carpeting was installed in both the old and new sections to create a uniform appearance.

7. During October, 1975, petitioner constructed a new bank building and purchased a tellers' counter and partitions being of the kind that separate the bank teller from the customer. The tellers' counter when in place, was approximately 40 feet long and was brought into the bank in several sections. Once in place, a formica laminate was placed over the seams to permanently connect the counter sections. The tellers' counter and partitions were placed on and bolted to sub-flooring and tied into the building piers at the ends of the counter and partitions. Along with providing work space for the bank tellers, the counter housed lines of communication and electricity for the bank's computer terminals.

The flooring in front of the tellers' counter and partitions was of a quarry tile. Carpeting was installed on the tellers' side of the counter. The piers at the point where the counter and partitions were connected were left unfinished.

8. Petitioner acted in good faith without any intent to evade the tax.

CONCLUSIONS OF LAW

A. That section 1105(a) of the Tax Law imposes a tax upon:

"(a) The receipts from every sale of tangible personal property..."

That section 1105(c)(3) of the Tax Law imposes, in part, a tax upon receipts from the sale of the following service:

"(3) Installing tangible personal property... except:
(emphasis added)

* * *

"(iii) for installing property which, when installed, will constitute an addition or capital improvement to real property...".

B. That pursuant to 20 NYCRR 527.7(a)(3) a capital improvement is defined as:

"(3) A capital improvement in an addition or alteration to real property

(i) which substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property, and

(ii) which becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself, and

(iii) is intended to become a permanent installation."

C. That the purchase and installation of the carpeting over the tiled floor does not meet the criteria of a capital improvement in accordance with 20 NYCRR 527.7(a)(3) and is therefore subject to tax under sections 1105(a) and (c)(3) of the Tax Law.

D. That in accordance with the stipulation of the Audit Division (Finding of Fact "4") the tax imposed on that portion of the carpeting installed over the unfinished floor is cancelled.

E. That petitioner failed to show that the tellers' counter and partitions were installed with the degree of permanency necessary to meet the criteria of a capital improvement as set forth in 20 NYCRR 527.7(a)(3).

F. That in accordance with the stipulation of the Audit Division (Finding of Fact "5") the tax that was assessed on purchases of \$6,633.00 for the period March 1, 1978 through November 30, 1978 is cancelled.

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

H. That the petition of Staten Island Savings Bank is granted to the extent indicated in Conclusions of Law "D", "F" and "G" above; that the Audit Division is hereby directed to accordingly modify the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued August 20, 1979; and that, except as so granted, the petition is in all other respects denied.

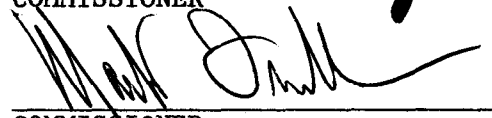
DATED: Albany, New York

MAY 11 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

P 481 207 759

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>Staten Island Savings Bank</u>	
c/o <u>Harry P. Doherty</u>	
Street and No. <u>81 Water Street</u>	
P.O., State and ZIP Code <u>Staten Island, NY 10304</u>	
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 481 207 760

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <u>John G. Hall</u>	
Street and No. <u>P.O. Box 87</u>	
P.O., State and ZIP Code <u>Staten Island, NY 10304</u>	
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