

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Northway Properties	: : :	: : : :
for Redetermination of a Deficiency or Revision of a Determination or Refund of Sales & Use Tax under Article 28 & 29 of the Tax Law for the Period 9/1/78 - 8/31/81.		: : : :

AFFIDAVIT OF MAILING

State of New York }
 ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of July, 1984, he served the within notice of Decision by certified mail upon Lowell L. Seifter, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Lowell L. Seifter
Green & Seifter
One Lincoln Center, 9th Fl.
Syracuse, NY 13202

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
31st day of July, 1984.




Authorized to administer oaths
pursuant to Tax Law section 174

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

July 31, 1984

Northway Properties
One Lincoln Center
Syracuse, NY 13202

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Lowell L. Seifter
Green & Seifter
One Lincoln Center, 9th Fl.
Syracuse, NY 13202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
NORTHWAY PROPERTIES	:	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 September 1, 1978	:	
through August 31, 1981.	:	

Petitioner, Northway Properties, One Lincoln Center, Syracuse, New York 13202, 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 September 1, 1978 through August 31, 1981 (File No. 37820).

A small claims hearing was held before Arthur Johnson, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on October 21, 1983 at 9:00 A.M. Petitioner appeared by Lowell L. Seifter, Esq. The Audit Division appeared by John P. Dugan, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether the amount of rental payment allocated to personal property under a lease agreement accurately reflected the fair rental value for such personal property.

FINDINGS OF FACT

1. Petitioner, Northway Properties, is a limited partnership that was formed for the purpose of purchasing the Northway Inn, a motel located in the Town of Salina, New York, and then leasing it back to the prior owner, the Hotel Syracuse, Inc.

2. On April 15, 1977, petitioner executed a lease agreement with Hotel Syracuse, Inc. which provided for the lease of the real estate together with all the personal property, including but not limited to furniture, fixtures, equipment, appliances, utensils, carpeting and all other items of any nature used in the operation of the premises and the conduct of business. The term of the lease was thirty years and a schedule of rental charges covering the duration of the lease was contained therein. The total rent called for under the lease was negotiated by the parties at arms length.

The lease allocated \$25,000.00 of the annual rent as the fair rental value of the personal property under the terms of the lease. The applicable sales tax was paid thereon.

Paragraph 7.1 of the lease provided that the lessee was responsible for all repairs to the personal property and at the lessee's expense, must replace all personal property when necessary. The replacements immediately became the property of the lessor.

The foregoing replacement clause was a primary factor in negotiating the rent for the personal property.

3. The total sales price for the Northway Inn was \$2,099,877.00 (existing mortgage balance of \$1,474,877.00 plus cash of \$625,000.00). The mortgage was a nonrecourse mortgage. Petitioner allocated fifty percent of its cash investment to the real property and fifty percent to the personal property. The rent attributable to the personal property was computed as follows:

investment or cost	\$312,500.00
8% return on investment	\$ 25,000.00

4. The Audit Division conducted an audit of petitioner's books and records. The Division analyzed the U.S. Partnership Return of Income for 1980. The depreciation schedule indicated that the cost of the tangible personal

property was 52.93 percent of total assets. On that basis, the Audit Division did not accept petitioner's allocation of rent for the personal property. Instead, the Audit Division determined that the rent should have been allocated in the above proportion. Therefore, the Audit Division applied 52.93 percent to rental payments of \$729,146.56 for the audit period to redistribute the rent applicable to personal property. This resulted in additional taxes due of \$21,911.53.

5. On March 9, 1982, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due against petitioner covering the period September 1, 1978 through August 31, 1981 for taxes due of \$21,911.53, plus penalty and interest of \$8,710.05, for a total of \$30,621.58. Petitioner executed a consent extending the period of limitation for assessment of sales and use taxes for the period September 1, 1978 through November 30, 1978 to March 20, 1982.

6. Since the commencement of the lease in April, 1977 to September, 1983, the Hotel Syracuse, Inc. has expended \$337,059.00 to replace personal property in accordance with the lease agreement. The applicable sales tax was paid on these replacements by the Hotel Syracuse, Inc.

CONCLUSIONS OF LAW

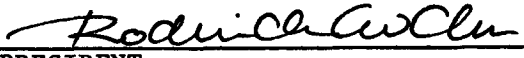
A. That the schedule of rent payments for the real and personal property under the terms of the lease were negotiated between petitioner and the Hotel Syracuse, Inc. in an arms length transaction. That considering the replacement clause in the lease (Finding of Fact "2"), the cost for the replacements to date with sales tax paid thereon (Finding of Fact "6") and method of determining the rent (Finding of Fact "3"), the annual rent of \$25,000.00 for the personal property reasonably reflects the fair rental value.

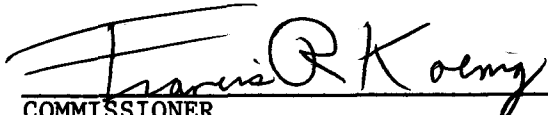
B. That the petition of Northway Properties is granted and the Notice of Determination and Demand for Payment of Sales and Use Taxes Due issued March 9, 1982 is cancelled.

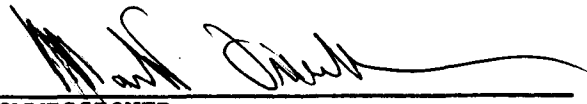
DATED: Albany, New York

STATE TAX COMMISSION

JUL 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER

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RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Northway Properties</i>	
Street and No. <i>One Lincoln Center</i>	
P.O., State and ZIP Code <i>Syracuse, NY 13202</i>	
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 440 977 362

RECEIPT FOR CERTIFIED MAIL

NO INSURANCE COVERAGE PROVIDED—
NOT FOR INTERNATIONAL MAIL

(See Reverse)

Sent to <i>Lowell L. Sifter</i>	
Street and No. <i>One Lincoln Center</i>	
P.O., State and ZIP Code <i>Syracuse, NY 13202</i>	
Postage	\$
Certified Fee	
Special Delivery Fee	
Restricted Delivery Fee	
Return Receipt Showing to whom and Date Delivered	
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