

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
One Estate, Inc.

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax :
under Article(s) 28 & 29 of the Tax Law for the :
Period 9/1/81-5/31/84.

State of New York :

County of Albany : ss.:

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 31st day of August, 1987, he/she served the within notice of Decision by certified mail upon One Estate, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

One Estate, Inc.
111 Broadway
New York, NY 10006

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
31st day of August, 1987.

Lynne M. Mc Nally
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
One Estate, Inc. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Sales & Use Tax
under Article(s) 28 & 29 of the Tax Law for the :
Period 9/1/81-5/31/84.
:

State of New York :

ss.:

County of Albany :

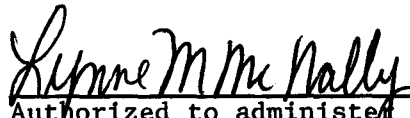
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 31st day of August, 1987, he served the within notice of Decision by certified mail upon Allen Leboff, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

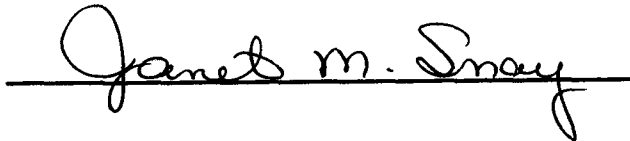
Allen Leboff
Spahr, Lacker, Berk & Naimer
3000 Marcus Avenue
Lake Success, NY 11042

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 August, 1987.


Authorized to administer oaths
pursuant to Tax Law section 174



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

August 31, 1987

One Estate, Inc.
111 Broadway
New York, NY 10006

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 453-4301

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Allen Leboff
Spahr, Lacker, Berk & Naimer
3000 Marcus Avenue
Lake Success, NY 11042

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ONE ESTATE, 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 September 1, 1981	:	
through May 31, 1984.	:	

Petitioner, One Estate, Inc., 111 Broadway, New York, New York 10006, 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, 1981 through May 31, 1984 (File No. 63643).

A hearing was held before Frank A. Landers, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 27, 1987 at 1:15 P.M., with all briefs and documents to be submitted by August 12, 1987. Petitioner appeared by Spahr, Lackner, Berk & Nalmer (Allen Leboff, CPA). The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the installation of a fire alarm system and an elevator control system constituted capital improvements to real property.

FINDINGS OF FACT

1. Petitioner operates two office buildings in New York City.
2. On May 20, 1985, the Audit Division issued a Notice of Determination and Demand for Payment of Sales and Use Taxes Due to petitioner, One Estate,

Inc., for the period September 1, 1981 through May 31, 1984, in the amount of \$34,071.44, plus interest of \$7,567.93, for a total amount due of \$41,639.37.

3. The assessment of sales tax was premised upon the Audit Division's conclusion that sales and use tax was due on three areas under review. First, the Audit Division concluded that sales and use tax of \$6,418.50 was due on air conditioning services provided by petitioner to its tenants. Second, the Audit Division concluded that sales and use tax of \$26,214.63 was due on the purchase price of the installation of a fire alarm system and an elevator control system. Lastly, the Audit Division concluded, as a result of a test period audit of expense purchases, that sales and use taxes were due in the amount of \$1,438.31.

4. After a pre-hearing conference, the amount of tax asserted to be due on the air conditioning services was adjusted from \$6,418.50 to \$4,892.84. Further, the amount of tax on recurring expenses was reduced to \$142.82. As a result, the total amount of tax currently asserted to be due by the Audit Division was reduced from \$34,071.44 to \$31,250.29 plus interest. As adjusted, the only item in issue is the imposition of sales and use tax arising from the installation of fire alarm and elevator control systems by, respectively, Fire Safety Advisors, Inc. ("Fire Safety") and Serge Elevator Company, Inc. ("Serge Elevator").

5. The Audit Division concluded that sales and use tax was due on the installation of the fire alarm and elevator control systems based on an examination of a service contract for the alarm system with AFA Protective Systems, Inc. ("AFA") which stated that, upon termination of the contract, the contractor could remove the control signaling system. Therefore, the Audit Division concluded that the installations in issue were not exempt as capital

improvements since they were purportedly not intended to be permanent components of petitioner's buildings.

6. On January 18, 1973, New York City enacted Local Law No. 5. In essence, Local Law No. 5 provided for fire safety requirements and controls in certain office buildings.

7. As the owner of office buildings in New York City, petitioner was required to comply with the provisions of Local Law No. 5. Therefore, on August 12, 1982, petitioner entered into contracts with Fire Safety for the installation of fire detection, fire alarm and advisory communications systems.

8. The installations made by Fire Safety consisted of installing new wiring throughout the buildings, installing fire detectors and fire alarms on each floor and installing control panels in the lobby of each building. The control panels were designed to alert a fire director to the alarm which was responding. In addition, a fire director could communicate with people on different floors and ascertain what was occurring.

9. The fire detection and alarm systems, including the control panels, added to the value of the buildings and were intended to remain in place permanently. Since a major component of the systems consisted of installed wiring, the systems would have only salvage value if they were removed.

10. Upon installation, petitioner acquired title to the fire detection and alarm systems installed by Fire Safety.

11. On or about September 5, 1980, petitioner entered into contracts with Serge Elevator for the installation of a "Fireman Service" feature to its elevators in the two buildings involved herein. When these systems were installed, an elevator could be recalled to the basement and control could be given to the fire department in the event of a fire.

12. The elevator recall systems added to the value of the buildings, would have had only scrap value if removed from the buildings and were intended to become a permanent installation.

13. Petitioner acquired title to the elevator recall systems upon the completion of their installation.

14. On January 19, 1984, a contract was entered into with AFA for the installation of a central station signaling system to connect the systems installed by Serge Elevator and Fire Safety to the central office of AFA. This, in turn, enabled AFA to notify the fire department if it became necessary. AFA also agreed to maintain the central station signaling system.

15. AFA reserved the right to remove the central station signaling system it had installed at the termination of the contract. However, it did not have the right to remove any of the equipment installed by Serge Elevator and Fire Safety.

16. Sales tax was paid on AFA's installation and maintenance charges.

CONCLUSIONS OF LAW

A. That the term "capital improvement" is defined by Tax Law § 1101(b)(9) as follows:

"Capital improvement. An addition or alteration to real property which:

- (i) Substantially adds to the value of the real property, or appreciably prolongs the useful life of the real property; and
- (ii) 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."

This provision, enacted by Chapter 471 of the Laws of 1981 (effective July 7, 1981), represents a legislative enactment of the substance of the Commission's

previously promulgated regulation on the subject, located at 20 NYCRR 527.7(a)(3).

B. That it is clear that the installations by Fire Safety and Serge Elevator satisfied the criteria of Tax Law § 1101(b)(9) and, therefore, said installations constituted capital improvements which were exempt from sales and use tax. It is noted that the fact that AFA had the right to remove its installation has no bearing on the assessment at issue herein and renders Matter of ADT Co., Inc. v. New York State Tax Commn., (113 AD2d 140, appeal dismissed 67 NY2d 917) readily distinguishable from the current situation.


C. That, in accordance with Finding of Fact "4", the Notice of Determination and Demand for Payment of Sales and Use Taxes Due is to be reduced to reflect the amount of tax agreed to regarding the air conditioning services and recurring expenses.

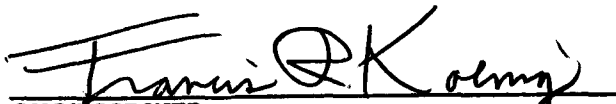
D. That the petition of One Estate, Inc. is granted to the extent of Conclusions of Law "B" and "C" and the Audit Division is directed to reduce the amount of tax assessed accordingly; the Notice of Determination and Demand for Payment of Sales and Use Taxes Due, dated May 20, 1985, is in all other respects sustained.

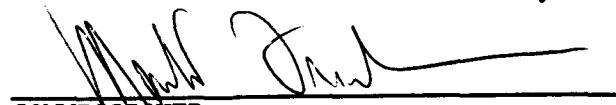
DATED: Albany, New York

STATE TAX COMMISSION

AUG 31 1987


PRESIDENT


COMMISSIONER


COMMISSIONER