

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>415 C.P.W. CO.</b>	:	DECISION
for Revision of a Determination or for Refund of	:	
Tax on Gains Derived from Certain Real Property	:	
<u>Transfers under Article 31-B of the Tax Law.</u>	:	

Petitioner, 415 C.P.W. Co., 585 West End Avenue, New York, New York 10024, filed an exception to the determination of the Administrative Law Judge issued on May 19, 1988 with respect to its petition for revision of a determination or for refund of tax on gains derived from certain real property transfers under Article 31-B of the Tax Law (File No. 804322). Petitioner appeared by Greenstien & Greenstein, Esqs. (Sol D. Greenstien, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Paul A. Lefebvre, Esq., of counsel).

Neither the petitioner nor the Division filed a brief on exception. Oral argument, at the request of petitioner, was heard on September 6, 1988.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether a transferor, subject to the gains tax, is allowed to increase the original purchase price in real property for expenses incurred to pay the New York State Transfer Tax and the New York City Conveyance Tax.

***FINDINGS OF FACT***

We find the facts as stated in the determination of the Administrative Law Judge and such facts are incorporated, unmodified, herein by this reference. The facts are summarized below.

On April 7, 1986, petitioner, 415 C.P.W. Co., filed a Claim for Refund of Real Property Transfer Gains Tax seeking a refund of tax paid under Tax Law Article 31-B ("gains tax") in the amount of \$18,154.70. This claim was based upon petitioner's assertion that certain costs of capital improvements and certain selling expenses (as described hereinafter) had been incurred by petitioner in connection with the ownership and subsequent (January 28, 1985) transfer of property located at 415 Central Park West. These costs and expenses were inadvertently unclaimed by petitioner at the time of its transfer of the premises and initial gains tax filing.

In response to the above referenced claim the Division of Taxation advised petitioner, by a letter dated December 30, 1986, that the claim had been granted to the extent of \$6,154.70 representing tax paid on the claimed additional costs for capital improvements. However, the balance of the claim for refund (\$12,000.00) was denied upon the basis that petitioner's payment of New York State Transfer Tax in the amount of \$20,000.00 and New York City Transfer Tax in the amount of \$100,000.00 in connection with the transfer of the property did not constitute selling expenses includable as part of petitioner's original purchase price for the property.

In turn, petitioner timely commenced this proceeding to contest the disallowed portion of its refund claim. There is no dispute as to the dollar amounts of costs incurred or the amount of refund (\$12,000.00) which would result if said expenses were deemed allowable as selling expenses. Thus, at issue is whether said expenses are allowable under Tax Law section

1440.5(a) as “customary, reasonable and necessary legal, engineering or architectural fees” incurred in selling real property.

***OPINION***

The facts are not in dispute. In connection with the sale of property subject to the gains tax, the petitioner incurred expenses to pay the New York State Transfer Tax and the New York City Conveyance Tax. There is no dispute that the petitioner was required to pay the aforementioned taxes to effectuate the transfer. What is in dispute is whether the petitioner can increase the property's original purchase price (“OPP”), and thereby lower the gain subject to tax, to reflect the expenses incurred to pay the transfer taxes. The Administrative Law Judge found no basis in the gains tax statute to support a step-up in OPP for transfer taxes paid in connection with the sale of the property. For the reasons stated below, we affirm the Administrative Law Judge's determination.

The relevant statute at issue is that which defines original purchase price. Tax Law section 1440.5(a), as in effect at the time of the transfer herein, defined "original purchase price" as:

"the consideration paid or required to be paid by the transferor; (i) to acquire the interest in real property, and (ii) for any capital improvements made or required to be made to such real property, including solely those costs which are customary, reasonable, and necessary, as determined under rules and regulations prescribed by the tax commission, incurred for the construction of such improvements. Original purchase price shall also include the amounts paid by the transferor for any customary, reasonable and necessary legal, engineering and architectural fees incurred to sell the property and those customary, reasonable and necessary expenses incurred to create ownership interests in

property in cooperative or condominium form, as such fees and expenses are determined under rules, and regulations prescribed by the tax commission."<sup>1</sup> (Emphasis added.)

The petitioner argues that the transfer taxes involved here fall under the category of "customary, reasonable and necessary legal. . . fees incurred to sell the property". The petitioner reads the statutory language to allow fees legally necessary to affect a conveyance of real property. The Administrative Law Judge determined that the relevant language taken as a whole meant professional fees in one of the three enumerated categories and not taxes. We agree.

First, we summarily reject petitioner's contention that since the word legal is not capitalized in the statute, it cannot be interpreted as professional fees. Second, we reject petitioner's argument that the Legislature meant to include as allowable selling expenses all fees that are legally necessary to effectuate a transfer. We find that the ambiguous and open-ended concept of "legally necessary fees" advocated by the petitioner is not a proper interpretation of the clear and unequivocal statutory language used by the Legislature.

The Legislature chose a specific term, fees, in connection with specific professional services. In the absence of a statutory definition, we defer to the ordinary meaning accorded the term (Building Contractors Association, Inc. v. Tully, 87 AD2d 909, 910). The term "fee" as used here is "a charge for a professional service" (Webster's New Collegiate Dictionary 454 [9th ed 1987]). Compare this to the legislative use of the term "costs" (the amount or

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<sup>1</sup> As originally enacted, the definition of original purchase price related only to the consideration paid by the transferor to acquire the interest in real property and the consideration paid by the transferor for any capital improvements made to the real property (former § 1440.5). The original definition was repealed by L 1984, ch 900, § 3 which added the current definition of original purchase price which provides for the allowance of specific "costs", professional "fees" and "expenses".

equivalent paid or charged for something) (Webster's New Collegiate Dictionary 295, *supra*) with regard to additions to OPP for capital improvements, and expenses (something expended to secure a benefit or bring about a result) (Webster's New Collegiate Dictionary 437, *supra*) with regard to additions to OPP with regard to creation of ownership interests in real property in cooperative or condominium form in the same section, i.e., 1440.5(a). Moreover, to interpret the word "legal" more expansively than the words "engineering" and "architectural" - which clearly connote professional fees- would be to completely ignore a general rule of statutory construction, referred to as the rule of noscitur a sociis (McKinney's Cons Laws of New York, Book 1, Statutes § 239), by which the meaning of words employed in a statute is ascertained by reference to the words with which they are associated. We conclude then that the Legislature did not intend that the term "legal fees" would include the New York State Transfer Tax and the New York City Conveyance Tax.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of 415 C.P.W. Co. is denied;
2. The determination of the Administrative Law Judge is affirmed; and
3. The petition of 415 C.P.W. Co. is denied and the denial of the refund claim is sustained.

Dated: Albany, New York  
MAR 02, 1989

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John P. Dugan  
President

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Francis R. Koenig  
Commissioner

