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*Income Tax Determinations*  
**BUREAU OF LAW  
MEMORANDUM**

A-2

*Sikorski, Chester P.*

TO: Commissioners Murphy, Macduff and Conlon

FROM: Francis V. Dow, Hearing Officer

SUBJECT: In the Matter of the Applications  
of Chester P. Sikorski for Revision  
or Refund of Personal Income Taxes  
under Article 16 of the Tax Law and  
Unincorporated Business Taxes under  
Article 16-A of the Tax Law for the  
Year 1957

A hearing with reference to the above matter was held before me on January 12, 1967 at 80 Centre Street, New York, New York. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The issues involved herein are whether the taxpayer's application with respect to the assessment issued on December 17, 1959 was timely filed, whether or not farm land sold was a capital asset, whether the gain on the sale was subject to capital gains tax and the proper method of computing the gain on the sale of the farm.

The taxpayer filed income tax and unincorporated business tax returns for the year 1957 in which he reported capital gains in the amount of \$83,000 on the sale of farm land. Assessment No. B-708528 was issued on September 17, 1959 finding additional normal tax and unincorporated business tax due in the amount of \$3,048.60 on the basis that land sold was used in the taxpayer's farming business; Assessment No. BTF-181780 was issued on July 11, 1961 finding additional normal tax and unincorporated business tax due in the amount of \$3,235.98 on the basis of changes made on a Federal audit of the taxpayer's return adjusting the gain to be taken into account on the sale of farm land to be in the amount of \$61,000.

The taxpayer, by letter dated January 22, 1960 which was received on February 3, 1960 by the Income Tax Bureau, protested Assessment No. B-708528 and requested forms upon which to make a formal application for revision or refund. The only formal application made by the taxpayer, however, was filed on January 6, 1962 and referred to both assessments.

During 1957 the taxpayer sold 40 acres of land in the Village of Southampton under imminent threat of condemnation to a union free school district. This land had been used by the

taxpayer for the cultivation of potatoes in his farming business. He purchased the land in 1940 for \$28,000. His expenses in connection with the purchase and sale of the property were \$2,000. The sale price was \$130,000 and his gain was \$100,000. During 1957 the taxpayer purchased other farm land for \$67,000 to replace the farm land sold by him during the year.

It is my opinion that the taxpayer's letter dated January 22, 1960 was a timely application with respect to Assessment No. B-708528.

Gains derived from dealings in property, real and personal, but excluding capital gains are includible in net income subject to the personal income tax (Tax Law sections 386-d, 359, subdivisions 1 and 5). The term "capital gain" means gain or profit from the sale or exchange of capital assets. Capital assets are defined as property held by a taxpayer but do not include land used in a trade or business (Tax Law section 350, subdivisions 12 and 13). Gains derived from any source connected with the carrying on of an unincorporated business are includible in net income subject to the unincorporated business tax. Accordingly, the gain realized on the sale of the farm land was subject to both income and unincorporated business taxes.

The taxpayer contended that only \$33,000 (\$130,000 sale price less \$28,000 cost, \$2,000 expenses and \$67,000 expended for replacement land) is taxable gain rather than \$61,000 (\$130,000 sale price less \$67,000 expended for replacement land and \$2,000 expenses). Under the provisions of section 354, subdivision 4 of the Tax Law, when property is sold as a result of a threat of condemnation the gain on the sale is not recognized if all of the net proceeds of the sale realized are used to purchase replacement property. If all of the net proceeds of the sale are not expended for replacement property, the gain is recognized to the extent that the net proceeds of the sale were not so expended.

As a result of error, the taxpayer was not given credit for \$595.49 which he paid on his 1957 tax liability. Also, as a result of error, \$33,300 rather than \$33,000 was listed as being the gain on the sale of farm and lots in the Assessment No. B-708528.

For the reasons stated above, I recommend that the determination of the State Tax Commission correcting Assessment Nos. B-708528 and BTF-181790 by reducing the total amount of them by the sum of \$625.50 to correct the erroneous computation of tax and omission of credit for taxes paid and otherwise denying the applications be substantially in the form submitted herewith.

/s/

FRANCIS V. DOW

Hearing Officer

FVD:pg

Enc.

June 7, 1967

6-12-67

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATIONS

OF

CHESTER P. SIKORSKI

FOR REVISION OR REFUND OF PERSONAL  
INCOME TAXES UNDER ARTICLE 18 OF THE  
TAX LAW AND UNINCORPORATED BUSINESS  
TAXES UNDER ARTICLE 18-A OF THE TAX  
LAW FOR THE YEAR 1957  
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The taxpayer herein having filed timely applications for revision or refund of personal income taxes under Article 18 of the Tax Law and unincorporated business taxes under Article 18-A of the Tax Law for the year 1957 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, New York on January 12, 1957 before Francis V. Dow, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by counsel and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed an amended tax return for the year 1957 in which he reported capital gains in the amount of \$33,000 on the sale of farm land.

(2) That an assessment of additional tax was issued on December 17, 1959 (Assessment No. B-708528) for the year 1957 finding additional normal tax and unincorporated business tax in the amount of \$3,048.60 on the basis that reported net gain of \$33,000 on the sale of farm lands is subject to normal tax and unincorporated business tax since it represented property used in the business of the taxpayer; that \$33,000 was the amount listed as the net gain in computing the additional tax due in the assessment.

(3) That an assessment of additional tax was issued on July 11, 1961 for the year 1957 (Assessment No. BTF-181780) finding additional normal tax and unincorporated business tax due in the sum of \$3,235.98 on the basis of changes made on a Federal audit of the taxpayer's return adjusting the gain to be taken into account on the sale of farm land to be in the amount of \$61,000.

(4) That during 1957 the taxpayer sold 40 acres of land; that the property sold was located in the Village of Southampton, New York; that it was sold to the Union Free School District No. 6 under imminent threat of condemnation; that prior to the sale the taxpayer utilized the land in his business for the cultivation of potatoes.

(5) That the 40 acres of land were purchased in 1949 for \$28,000; that the taxpayer's expenses in connection with the purchase and sale of the property were in the sum of \$2,000; that the sale price of the property was \$130,000; that the taxpayer's gain on the sale of the property was \$100,000.

(6) That during 1957 the taxpayer purchased other farm land to replace the farm land sold by him during the year; that the taxpayer spent \$67,000 to purchase the land to replace the land sold under the threat of condemnation during the year.

(7) That the taxpayer paid the sum of \$1,073.52 on his 1957 tax liability at the time that he filed his tax return; that the assessments issued for 1957 allow the taxpayer credit for the taxes paid on his 1957 tax liability in the sum of \$1,073.03; that the taxpayer was not given credit for taxes paid in 1957 in the amount of \$886.49 as a result of error.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

(A) That the sale of farm land by the taxpayer was not a sale of a capital asset as defined by section 350, subdivision 12 of the Tax Law and is not subject to the capital gains tax imposed under the provisions of section 351 of the Tax Law since the land was used in the taxpayer's farming business; that, accordingly, the gain realized on the sale of the farm land is taxable as income from the taxpayer's unincorporated business and is also subject to personal income tax.

(B) That by virtue of findings 4, 5 and 6 the taxpayer's gain subject to unincorporated business and personal income taxes was \$61,000 since under the provisions of section 354, subdivision 4 of the Tax Law, when there is a threat of condemnation or imminence thereof, resulting in the involuntary conversion of property into money, a portion of which is expended in the acquisition of property related in use to the property converted, the full amount of the gain is recognized but not in an amount in excess of the money which is not so expended to acquire property related in use to the property converted.

(C) That the taxpayer is entitled to a credit in the amount of \$595.49 in computing normal tax and unincorporated business tax due since the taxpayer had paid \$595.49 with his 1957 tax return which had not been credited to the taxpayer in either Assessment No. B-705528 or Assessment No. BTF-181780.

(D) That, accordingly, the taxpayer's tax liability for the year 1957 is recomputed as follows:

Normal Tax Adjusted:

Normal taxable balance reported	\$12,078.40	
Gain from sale of farm land	61,000.00	
Medical disallowance	301.62	
Repairs disallowed on Federal audit	<u>1,418.00</u>	
Adjusted taxable income	\$74,798.00	
Normal tax 2-7 1/2		\$4985.86

Adjusted Net Capital Gain Tax:

Amount reported subject to capital gain tax	\$33,931.62	
Less amount not subject to tax	<u>33,000.00</u>	
Adjusted net capital gain	\$ 931.62	
Net capital gain at 1 1/2		\$ 9.32

Unincorporated Business Tax Adjusted:

Net business income reported	\$ 6,892.66	
Gain on sale of farm land	61,000.00	
Repairs disallowed on Federal audit	<u>1,418.00</u>	
Adjusted unincorporated business income	\$69,310.66	
Salary credit \$5,000		
Statutory exemption \$5,000	<u>\$10,000.00</u>	
Amount subject to unincorporated business tax	\$59,310.66	
Unincorporated business tax at 4%		\$2337.60
(Less statutory credit of \$35)		
Total taxes		\$7332.60
Amount paid with return		<u>\$1673.52</u>
Total taxes due		\$5659.08

(E) That by virtue of (D) above the assessments for additional taxes (Assessment Nos. BTF-181780 and B-708528) are hereby modified by cancelling \$625.50 therefrom; that the total of the assessments for the year 1957 in the modified amount of \$5,659.08 are correct and lawfully due and owing together with interest and other charges and do not include any other taxes or

charges which are not lawfully due and owing.

Dated: Albany, New York this 21st day of June , 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

/s/

JAMES R. MACDUFF

COMMISSIONER

/s/

WALTER MACLYN CONLON

COMMISSIONER