

George Goldberg
Personal Income
Article 16

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
:
of
:
GEORGE GOLDBERG
:
For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s)) 1959
:

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon GEORGE

GOLDBERG (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. George Goldberg
16 Court Street
Brooklyn, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

13th day of January, 1971.
Martha Furman

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE GOLDBERG

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1959

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State of New York
County of Albany

Linda Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon GEORGE

GOLDBERG (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Emanuel Fass
Fass & Buchalter
140 Nassau Street
New York 38, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

13th day of January, 1971.

Martha Fusaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ELI GOLDBERG

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1959

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson

, being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of January , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon ELI GOLDBERG

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Eli M. & Grace Goldberg
16 Court Street
Brooklyn, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

13th day of January , 1971.

Martha Fusaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ELI GOLDBERG

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1959

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon ELI GOLDBERG (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Emanuel Fass
Fass & Buchalter
140 Nassau Street
New York 38, New York
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

13th day of January, 1971.

Martha Furness

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Ella Marcus

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1959

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Martha Funaro, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Ella Marcus (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ella Marcus
16 Court Street
Brooklyn, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

15th day of January, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MURRAY FELDMAN

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 16 of the
Tax Law for the (Year(s) 1959

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson

, being duly sworn, deposes and says that

she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of January , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon MURRAY

FELDMAN

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Mr. Murray Feldman
16 Court Street
Brooklyn, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

13th day of January , 1971.

Martha Fuars

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
GEORGE GOLDBERG :
for Revision or Refund of Personal :
Income Taxes under Article 16 of the :
Tax Law for the year 1959 :
:

In the Matter of the Application :
of :
ELI GOLDBERG :
for Revision or Refund of Personal :
Income Taxes under Article 16 of the :
Tax Law for the year 1959 :
:

DETERMINATION

In the Matter of the Application :
of :
ELLA MARCUS :
for Revision or Refund of Personal :
Income Taxes under Article 16 of the :
Tax Law for the year 1959 :
:

In the Matter of the Application :
of :
MURRAY FELDMAN :
for Revision or Refund of Personal :
Income Taxes under Article 16 of the :
Tax Law for the year 1959 :
:

The taxpayers having filed applications for revision of additional assessments of personal income taxes imposed by Article 16 of the Tax Law and such applications having been denied, and a hearing demanded and duly held and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue in this case is whether certain land is "land used in the trade on business" within the intent of Tax Law Section 350(12) so that the losses from the sale thereof are normal losses deductible under Tax Law Section 360(4) as asserted by taxpayer or whether the losses are deductible under Section 360(a) from capital gains only.

2. The assessments amount to: \$1,491.86 against George Goldberg by reason of a loss of \$11,429.37 from a joint venture and an additional loss of \$5,188.80 from a partnership; \$1,214.45 against Eli Goldberg by reason of losses of \$11,429.37 from a joint venture and \$5,188.80 from a partnership and certain other changes; \$1,081.14 against Ella Marcus by reason of a loss of \$11,429.37 from a joint venture; \$513.64 against Murray Feldman by reason of a loss of \$5,188.80 from a partnership.

3. The joint venture of George Goldberg, Eli Goldberg and Ella Marcus owned an office building in Schenectady, New York. This was its only asset. It was sold in 1959 at a loss of \$34,288.11.

4. The partnership of Albermarle Estate included George Goldberg, Eli Goldberg, Murray Feldman and others as partners. It owned as its sole asset a four story office building in Cincinnati, Ohio, consisting of shop space and loft space. They sustained an operating loss in 1959 of \$4,509.22 which is conceded to be fully deductible and a further loss on the sale of the building of \$31,132.80 for a total loss of \$35,642.02.

5. Each taxpayer herein had interests directly or indirectly in from six to twelve other parcels of real estate.

6. The losses herein question were allowed as ordinary losses by the Federal income tax authorities.

Upon the foregoing findings and all the evidence in the case,
The State Tax Commission hereby

DETERMINES:

A. The taxpayer has not carried the burden of proof that the property here in issue is "land used in a trade or business" (See *Appleby v Bates* 278 App. Div. 12). Thus the property constitutes capital assets the losses of which are capital losses.

B. The application is denied. The additional assessments do not contain any tax on other charges which could not have been lawfully demanded and are affirmed together with such interest and other charges as may be lawfully due pursuant to Sections 376 and 377 of the Tax Law.

DATED: Albany, New York

January 11, 1971

STATE TAX COMMISSION

Raymond H. Halperin

COMMISSIONER

COMMISSIONER

Milton Koerner

COMMISSIONER