

STATE OF NEW YORK
STATE TAX COMMISSION

Kagan Frank
Personal Lucone
JD

In the Matter of the Petition

of

FRANK KAGAN AND GUSSIE KAGAN,
His wife
For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1960

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 11th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon FRANK KAGAN AND GUSSIE KAGAN, His (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Frank and Gussie Kagan
1875 - 48th 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

11th day of January, 1971

Martha Furaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK AND GUSSIE KAGAN

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1960

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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 11th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon FRANK AND GUSSIE KAGAN (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Irving Taub, Esq.
150 Fifth Avenue
New York, 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

11th day of January, 1971

Martha Ferraro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAM ROSEN AND SYLVIA ROSEN

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1960

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 11th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon SAM ROSEN AND SYLVIA ROSEN (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Sam Rosen and Sylvia Rosen
4200 Avenue K,
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

11th day of January, 1971.

Martha Funn

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SAM ROSEN AND SYLVIA ROSEN

For a Redetermination of a Deficiency or
a Refund of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1960

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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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 11th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon SAM ROSEN AND SYLVIA ROSEN (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Irving Taub, Esq.
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Sworn to before me this

11th day of January, 1971.

Martha Suarez

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
 :
 of :
 :
 FRANK KAGAN AND GUSSIE KAGAN, :
 his wife :
 :
 for Redetermination of a Deficiency :
 or for Refund of Personal Income Taxes :
 under Article 22 of the Tax Law for :
 the year 1960 :
 :

DECISION

In the Matter of the Petition :
 :
 of :
 :
 SAMUEL ROSEN AND SYLVIA ROSEN, :
 his wife :
 :
 for Redetermination of a Deficiency :
 or for Refund of Personal Income Taxes :
 under Article 22 of the Tax Law for :
 the year 1960 :
 :

Taxpayers petitioned for redeterminations of deficiencies or for refunds of personal income taxes under Article 22 of the Tax Law for the year 1960. A formal hearing was held in the offices of the State Tax Commission in the City of New York on September 22, 1966. The taxpayers were represented by Irving Taub, Esq.

FINDINGS OF FACT

1. The issue in these cases is whether the liquidation of a corporation of which the taxpayers were fifty percent shareholders was made pursuant to Section 337 rather than Section 333 of the Internal Revenue Code so as to enable the taxpayers to treat gain realized from the liquidation as long-term capital gains.

2. Taxpayers were fifty percent shareholders of Rokay Realty, Inc. In 1960 the corporation was liquidated, and the taxpayers reported their distributive share as long-term capital gains on Schedule "D" of their federal return.

3. Based upon a request for additional information from the New York State Department of Taxation and Finance, the taxpayers mailed a copy of Form 964 (election of shareholder to liquidate within a 30-day period the assets of Rokay Realty, Inc. pursuant to Section 333 of the Internal Revenue Code). Notices of deficiency, file #6590159 for Frank and Gussie Kagan, and file #8464674 for Samuel and Sylvia Rosen, dated April 13, 1964, was issued in the amount of \$2360.07 plus interest holding the gain realized on the real estate sold by the corporation subject to ordinary dividend income pursuant to Section 333 of the Internal Revenue Code. This notice also redetermined the taxpayers' share of the gain to be \$37,553.06 rather than the \$22,660.15 the taxpayers reported.

4. Taxpayers concede that the above figure of \$37,553.06 is correct. However, they argue that liquidation was conducted under Section 337 rather than Section 333 of the Internal Revenue Code and that the gains realized from the liquidation should be treated as long-term capital gains.

5. A special meeting of the Board of Directors of Rokay Realty was held on March 1, 1960, at which a special resolution was adopted directing the corporation to liquidate on or before March 1, 1961.

6. All assets of Rokay Realty were sold on March 22, 1960.

7. Rokay Realty, Inc. filed a final United States Corporation Income Tax Return for the year 1960 indicating complete liquidation pursuant to Section 337 of the Internal Revenue Code.

DECISION

A. Rokay Realty, Inc., pursuant to Section 337 of the Internal Revenue Code, elected to and did adopt a plan of complete liquidation and distributed fifty percent of its assets to the taxpayers.

B. The taxpayers have carried their burden of proof in that the gain realized from the liquidation of the above corporation is taxable as a long-term capital gain.

C. Accordingly, the statement of audit changes and notice of deficiency are modified; and the tax due is recomputed as follows:

Taxpayers' share of surplus at date of liquidation	\$37,553.06
Long-term capital gain reported	<u>22,660.15</u>
Additional long-term capital gain	<u>\$14,892.91</u>
Additional taxable income	<u>\$ 7,446.45</u>
tax at 10%	\$744.65
less 10% reduction	<u>74.47</u>
Additional tax due	<u>\$670.18</u>

D. Statutory interest shall be imposed in addition to the tax, as modified.

DATED: Albany, New York
December 31, 1970

STATE TAX COMMISSION

Norman Hellman

COMMISSIONER

COMMISSIONER

Milton Koerner

COMMISSIONER