



STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

January 19, 1971

Mr. and Mrs. Joseph Santero

~~488 Jersey Street~~ 390 Belle Point Drive

~~Staten Island 1, New York~~ St. Petersburg, Florida

Please take notice of the DETERMINATION of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section 386j
the Tax Law any proceeding in court to review an adverse decision
must be commenced within 90 days after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Lawrence A. Newman

Lawrence A. Newman

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
JOSEPH AND MARY SANTERO	:	DETERMINATION
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 years 1956,	:	
1957, and 1959	:	

Joseph Santero and Mary Santero, his wife have filed an application for revision or refund of personal income taxes under Article 16, and unincorporated business taxes under Article 16-A of the Tax Law for the years 1956, 1957, and 1959. A formal hearing was held at the offices of the State Tax Commission in New York City on September 27, 1968. The taxpayers were represented by Morris Horowitz, Attorney at Law, and Arthur Goldberg, C.P.A.

FINDINGS OF FACT

1. Taxpayer filed income tax resident returns and unincorporated business tax returns for the years 1956, 1957 and 1959.
2. On March 15, 1962, the Income Tax Bureau issued assessment number AB 001653 for the years 1956 totalling \$462.98. The assessment was based upon the gain on the sale of land, which gain was reported as a capital gain by the taxpayer on taxpayer's personal income tax return, but not on his unincorporated business tax return. Taxpayer filed timely application for revision for the 1956 assessment and since he testified as to the merits of the 1956 assessment, his application for revision will be accepted in lieu of a demand for hearing.
3. On June 2, 1960, the Income Tax Bureau issued assessment number BTF 164218 for the year 1957 totalling \$357.85. The assessment was based upon the gain on the sale of land, which gain was reported on taxpayer's personal income tax return, but not on his unincorporated

business tax return. Taxpayer filed timely application for revision, which application was denied. A demand for a formal hearing was timely filed.

4. On March 28, 1963, the Income Tax Bureau issued assessment number AB 048897 for the year 1959 totalling \$373.50. Taxpayer filed timely application for revision for the 1959 assessment, and since he testified as to the merits of the 1959 assessment, his application for revision will be accepted in lieu of a demand for hearing.

5. Taxpayer raised the question as to the timeliness of the 1956 assessment. His contention was that the assessment was not timely since it was not issued within the two year statutory limit.

6. In each instance, the gain on the sale of land which was reported as capital gain on taxpayer's personal income tax returns, (but not on his unincorporated business tax returns) exceeded 25% of the amount of gross income or capital gain that was reported by the taxpayer on these personal income tax returns.

7. Taxpayer is a builder of one family homes. During 1955, 1956, and 1957 taxpayer acquired vacant parcels of land. A total of eleven parcels were sold in the years 1956, 1957 and 1959; and the gain on the sale of this land was reported as capital gain for those years.

8. It was often the case that taxpayer would build homes on land he owned, and in turn sell the building and land as one unit.

9. Taxpayer has failed to sustain the burden of proving that his activities of buying and selling land were a separate activity from his business interests as a builder of homes.

DETERMINATION

A. Pursuant to Section 373 of the Tax Law the assessment for the year 1956 was timely issued since it was found that an amount in excess of 25% was omitted from gross income or capital gain thus setting a five year statutory limit.

B. The sale of vacant parcels constituted a part of taxpayer's regularly conducted business activities and the gain was subject to the unincorporated business tax.

C. The assessments are sustained and the applications for revision are denied.

DATED: Albany, New York

January 18, 1971,

STATE TAX COMMISSION

Norman Kellman

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Krenn

COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12226

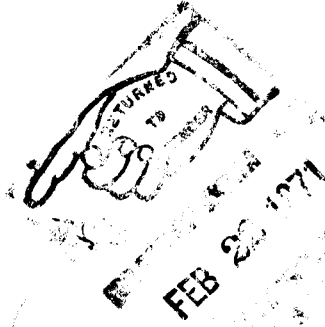
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- ☐ Moved, not forwardable
- ☒ Addressee unknown

*Not known
at this address*

Mr. & Mrs. Joseph Santero
390 Belle Point Drive
St. Petersburg, Florida

Lawrence H. Martin



STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12226

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ANY MORE

Mr. and Mrs. Joseph Santero

488 Jersey Street

Staten Island 1, New York

2/2/62

Swelrand Newman

ALWAYS USE
ZIP CODE



ARTHUR GOLDBERG
CERTIFIED PUBLIC ACCOUNTANT
26 COURT STREET
BROOKLYN 1, N.Y. 11201
ULSTER 2-6770

April 19, 1971

State Tax Commission
Hearing Unit
Building 9, Room 214 A
State Campus
Albany, N. Y. 12226

Re: Application of
Joseph & Mary Santero
for Revision of 1956, 1957,
and 1959 assessments.

Gentlemen:

I respectfully submit that it is unfair for the Tax Commission to take years to grant a hearing and over a year to notify the taxpayers' representative of a determination, and then allow the taxpayers' representative only 90 days, and those 90 days occurring at the busiest time of the year for the taxpayers' representative, within which to make a decision to proceed with a court review.

I therefore request that you extend the time for at least another 90 days to permit me an opportunity to communicate and consult with my clients as to their wishes in this matter.

Very truly yours,

Arthur Goldberg

Arthur Goldberg, C P A

*4/22/71 telephoned Accountant to
advise him that May 10, 1971 is the
deadline for starting Article 78 review,
and that no extension can be
granted. (Determination was remailed
to taxpayer on February 9, 1971).
L. A. Korman*

STATE OF NEW YORK
STATE TAX COMMISSION

Santero, Joseph & Mary

In the Matter of the Petition

of

JOSPEH AND MARY SANTERO

For a Redetermination of a Deficiency or
a Refund of Personal & Unincorporated
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) 1956, 1957, and
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 19th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon JOSEPH AND MARY SANTERO (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Joseph and Mary Santero
(present 2/9/71) ~~488 Jersey Street~~ 390 Belle Point Drive
Staten Island 1, New York
St. Petersburg, Fla.
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

19th day of January, 1971

Arthur Fucaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH AND MARY SANTERO

For a Redetermination of a Deficiency or
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26 Court Street
Brooklyn, New York

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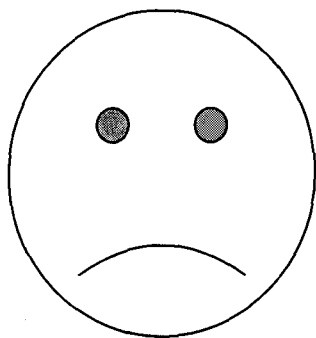
Sworn to before me this

19th day of January, 1971.

Arthur Furano

Linda Wilson

CORRECTION FOLLOWS



NOTE: THE FOLLOWING
DOCUMENT(S) ARE BEING REFILMED
TO ENSURE CLARITY

PHOTO MICROGRAPHICS INC.

STATE TAX COMMISSION

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January 18, 1971.

STATE TAX COMMISSION

William Hallman

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