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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD V. GEHRKE

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

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

State of New York
County of Albany

Rae Zimmerman , 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 29th day of February , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Edward V. Gehrke

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Edward V. Gehrke
c/o Seymour Trager, Esq.
Ferber & Trager, Esqs.
511 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

29th day of February , 1972.

Jinda Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD V. GEHRKE

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated
Taxes under Article(s) 16 & 16A of the Business
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 23rd day of February, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Edward V. Gehrke

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Edward V. Gehrke
85 Norman Avenue
Amityville, 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

23rd day of February, 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD V. GEHRKE

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

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

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 23rd day of February , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Seymour Trager, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Seymour Trager, Esq.
Ferber & Trager, Esqs.
511 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

23rd day of February , 1972.

Ral Zimmerman

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

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

Dated: Albany, New York

February 23, 1972

**Edward V. Gehrke
85 Norman Avenue
Amityville, New York**

Dear Sir:

Please take notice of the **Determination** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 375 & 386j** of
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
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of
EDWARD V. GEHRKE : DETERMINATION
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 :
Year 1959. :

Edward V. Gehrke has made application for refund of personal income taxes under Article 16 and unincorporated business taxes under Article 16-A of the Tax Law for the year 1959. A formal hearing was held before Vincent P. Molineaux in the offices of the State Tax Commission in New York City, on February 18, 1965. The applicant did not appear but was represented by Ferber and Trager, Esqs., (Seymour Trager, Esq. of Counsel).

ISSUES

I. Whether gain from the sale of the business real property can be reported on an installment basis.

II. Whether the gain on the sale of good will was subject to unincorporated business tax.

FINDINGS OF FACT

1. Taxpayer filed a personal income tax return and an unincorporated business tax return for the year 1959.

2. On March 20, 1961, the Income Tax Bureau issued assessment number B843957 in the sum of \$3,026.04 based on the sale of business assets. Subsequently this assessment was reduced to \$2,942.74 by the Income Tax Bureau allowing the full \$5,000.00 exemption pursuant to Article 16-A.

3. In 1959, taxpayer sold to one William W. Burns, a going business conducted by the taxpayer at Copiague, New York, under

the name of Eddie's First Aid Garage. The agreement for the sale of the business for \$60,000.00 provided for the payment of \$18,000.00 on the signing of the agreement. The agreement provided further that the purchaser was to deliver a purchase money first mortgage to the seller in the amount of \$17,000.00 covering the real property on which the business was located. The balance of \$25,000.00 was to be paid by a series of 120 negotiable notes payable monthly.

4. Two closing statements were prepared showing transfer of the real property for \$20,000.00 and transfer of other assets for \$40,000.00. The \$40,000.00 for the other assets was divided between inventory, \$15,000.00; tools, \$2,000.00 and good will \$23,000.00.

DETERMINATION

A. Pursuant to section 386D of the Tax Law, the gain of \$22,760.22 on the sale of good will was properly assessed by the Income Tax Bureau as subject to unincorporated business tax.

B. Since the \$3,000.00 received as a down payment on the sale of the real property was less than 30% of the sale price, the gain on the sale of the real property may be reported on the installment basis.

C. The assessment number B843957, based upon the disallowance of the installment method of reporting the sale of the real property for \$20,000.00, is erroneous and the assessment should be reduced to read as follows:

\$22,760.22	Gain on sale of good will
4%	Unincorporated Business Tax
\$ 910.41	Additional tax due
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D. The application for revision of the assessment is partially granted accordingly.

DATED: Albany, New York

February 23, 1972.

STATE TAX COMMISSION

Thomas Gallivan
COMMISSIONER

Bruce Mauley
COMMISSIONER

William Koenn
COMMISSIONER

March 1, 1972

Seymour Trager, Esq.
Ferber & Trager, Esqs.
370 Lexington Avenue
New York, N.Y. 10017

Re: Edward V. Gehrke
Decision dated Feb. 23, 1972
Articles 16 & 16A - 1959

Dear Mr. Trager:

This acknowledges your letter regarding the recent decision of the State Tax Commission.

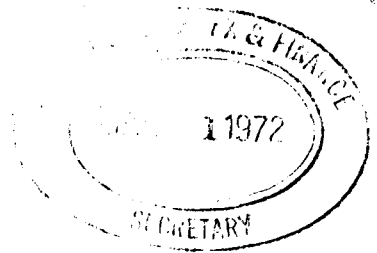
Your letter has been referred to the Litigation Unit of our Bureau of Law for their attention and response to your inquiry.

Very truly yours,

Lawrence A. Newman
Hearing Officer

LAN/z
cc: Law Bureau

FERBER & TRAGER
ATTORNEYS AT LAW
370 LEXINGTON AVENUE
NEW YORK, N. Y. 10017
212 - 725-5966



STANLEY FERBER
SEYMOUR TRAGER

February 26, 1972

Mr. Lawrence A. Newman,
Department of Taxation and Finance
Building 9, Room 214A
State Campus
Albany, New York 12226

Re: Edward V. Gehrke
Assessment no 843957

Dear Sir:

We are in receipt of your determination, in
the above matter, dated February 23, 1972.

The assessment of \$2,942.74, plus accrued
interest, was paid ten years ago. As this assessment
has been reduced to \$910.41, please send us a check
for \$2,032.33, plus accrued interest, by return mail.

Very truly yours,

Seymour Trager
Ferber and Trager

ST:eg

2/14/72

Phone call to

Mr. Trager, Rep.

(NYC)

139-725-5966

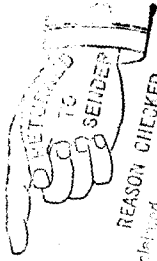
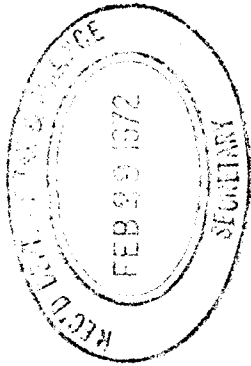
12c better address for Helke
- page

Send dec. c/o

Trager in NY

18

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227



REASON CHECKED

- ☐ Undelivered
- ☐ Addressee unknown
- ☐ Insufficient Address
- ☐ No such street
- ☐ No such office in state
- ☐ Do not remain in this envelope

Refused
Address
number
state

Edward V. Gehrke

Norman Avenue

Amityville, New York

- ☐ Moved, list to address
- ☐ No such number
- ☒ Moved, list to new address
- ☐ Address changed

Edward V. Gehrke

Handwritten notes and signatures at the top of the page.