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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
WHITELAW & ELIZABETH REID
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) 1965 & 1966 :

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 21st day of March , 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon Whitelaw & Elizabeth Reid (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Whitelaw & Elizabeth Reid
Ophir Farm
Purchase, 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

21st day of March , 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
WHITELOW & ELIZABETH REID
For a Redetermination of a Deficiency or
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Taxes under Article(s) 22 of the
Tax Law for the (Year(s) 1965 & 1966 ;

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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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 21st day of March , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Harry N. Borsher, Esq.

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

wrapper addressed as follows: Harry N. Borsher, Esq.
Paley, Levy, Rogers & Carroll
80 Broad Street
New York, New York 10004

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

21st day of March , 1972.

Rae Zimmerman

Martha Funaro



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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 21, 1972

**Whitelaw & Elisabeth Reid
Ophir Farm
Purchase, New York**

Dear Sir & Madam:

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

Please take further notice that pursuant to **section 690**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** 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,

L. Robert Leimer
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
WHITELOW & ELIZABETH REID : DECISION
for a Redetermination of a Deficiency :
or for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for the :
Years 1965 and 1966. :

The taxpayers, Whitelaw and Elizabeth Reid, petitioned for a redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1965 and 1966.

Formal hearings were held at the offices of the State Tax Commission, 80 Centre Street, New York, New York on October 14, 1970, and March 2, 1971, before L. Robert Leisner, Hearing Officer.

The taxpayers were represented by Harry N. Borsher, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Albert J. Rossi and Alexander Weiss, Esqs., of Counsel).

ISSUES

I. Was the New York land condemnation award taxable for New York State income tax purposes?

II. What part, if any, of the \$340,000.00 condemnation award on the taking of the land was allocable to severance damages.

FINDINGS OF FACT

1. The Income Tax Bureau issued a notice of deficiencies for income tax for the years 1965 and 1966 under File No. 66161938.

2. The taxpayers timely petitioned for a hearing and a redetermination of the deficiency.

3. The taxpayers claimed that: (a) the condemnation award was not taxable because the award could only be for the value of the property and no profit could be made, and (b) the deficiency was excessive because part of the award was attributable to severance

damages.

4. The taxpayer, Whitelaw Reid, owned 93.05 acres, and 33.647 acres were taken. The total award of \$340,000.00 paid in 1965 and 1966 and the cost of the 33.647 acres taken, \$41,584.33, were as set forth in the deficiency notice. The condemnation settlement mentions that it would also include severance damages, but no evidence was adduced to show the amount of the severance damages, if any, or of any definite amount of the settlement attributable to severance damages.

CONCLUSIONS OF LAW

A. To the extent that the condemnation award exceeds the cost basis of the property taken or damaged, it is taxable income.

B. The evidence does not show what, if any, amount of the award is attributable to severance damages.

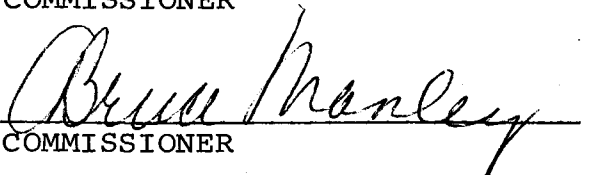
C. The determination of the deficiencies is sustained.

D. Pursuant to the Tax Law, interest shall be added to the total amount of tax due until paid.

DATED: Albany, New York
March 21, 1978

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER