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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

J. WALDRON and LILLIAN BAYLES

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

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

State of New York
County of Albany

Lynn 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 28th day of August , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon J. WALDRON and
LILLIAN BAYLES (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. J. Waldron Bayles
Center Island
Oyster Bay, New York 11771
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

28th day of August , 1973.

Martha James

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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J. WALDRON and LILLIAN BAYLES

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Tax Law for the (Year(s) 1959.

State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 28th day of August , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon A. BRUCE
BIELASKI, JR., ESQ. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: A. Bruce Bielaski, Jr., Esq.
1 West Main Street
Smithtown, New York 11787

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

28th day of August , 1973.

Martha J. Durase

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Mario A. Procaccino
~~NORMAN K. EXELMAN~~, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
August 28, 1973

J. Waldron and Lillian Bayles
Center Island
Oyster Bay, New York 11771

Dear Mr. and Mrs. Bayles:

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

Please take further notice that pursuant to **sections 375 and 386(j)** 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,


Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
J. WALDRON and LILLIAN BAYLES	:	DETERMINATION
for Revision or for Refund of Personal	:	
Income and Unincorporated Business Taxes	:	
under Articles 16 and 16-A of the Tax Law	:	
for the Year 1959.	:	
	:	

Applicants, J. Waldron and Lillian Bayles, have filed an application for revision or for refund of personal income and unincorporated business taxes under Articles 16 and 16-A of the Tax Law for the year 1959. (File No. 3-7644637). A formal hearing was scheduled for January 19, 1972, at 1:15 P.M. at the offices of the State Tax Commission, 80 Centre Street, New York, New York. On January 18, 1972, applicants, J. Waldron and Lillian Bayles, in writing, waived a formal hearing and consented to the issuance of a determination without the introduction of additional evidence.

ISSUES

I. Are the assessments barred by the expiration of the Statute of Limitations?

II. Did the activities of the taxpayer, an oyster dredger, constitute the carrying on of an unincorporated business?

III. Did the gain on the sale of the assets of taxpayer, J. Waldron Bayles' business constitute ordinary income or capital gain?

FINDINGS OF FACT

1. In 1959, applicant, J. Waldron Bayles, was the sole proprietor of an oyster dredging business in Long Island Sound. In connection with this business he owned five oyster ships, certain equipment and marine supplies and numerous franchises and leaseholds to oyster beds. In the course of his business operations, applicant would clean his growing beds in hopes that the seeds of the oysters would set in the beds. The growing oysters would then be moved to fattening beds where they would grow to commercial size in four to five years. Applicant would then dredge the oyster beds and sell the oysters.

2. On November 30, 1959, applicant, J. Waldron Bayles, sold his entire oyster business. Under the terms of the agreement, the five oyster ships including equipment and marine supplies were sold for \$120,000.00. Of the \$120,000.00, \$40,000.00 was to be paid in cash upon signing of the agreement, and the remaining \$80,000.00 was to be paid in four equal installments of \$20,000.00 on or before the 30th of November for each of the four successive years. The title and interest in and to the leaseholds and franchises to the oyster beds were sold for \$80,000.00, to be paid in four equal installments of \$20,000.00 on or before the 30th of November for each of the four successive years. All the oysters and other shellfish contained in the beds covered by the leaseholds and franchises were sold for \$800,000.00, to be paid in four equal installments of \$200,000.00 on or before the 30th of November for each of the four successive years.

3. Applicants, J. Waldron and Lillian Bayles, filed a New York State combined income tax return for the year 1959. They filed no New York State unincorporated business tax return for the year 1959.

4. On November 25, 1964, applicants, J. Waldron and Lillian Bayles' Federal income tax return for the year 1959 was adjusted. The adjustment reflected the disallowance as a capital gain allowance of income received from the sale of the oysters.

5. On April 27, 1966, applicants, J. Waldron and Lillian Bayles, notified the Income Tax Bureau that their Federal income tax return for the year 1959 was adjusted.

6. On March 15, 1968, the Income Tax Bureau issued a Notice of Additional Assessment against applicants, J. Waldron and Lillian Bayles, disallowing \$79,190.33 reported as capital gain claimed on the sale of oysters and considered it as normal income. Additional income of \$36,526.98 per the Federal audit was assessed. A tax of \$5,262.81 was imposed. Unincorporated business income was assessed at \$31,955.86 for the year 1959 and a tax of \$843.23 was imposed. A penalty of \$210.81 for failure to file an unincorporated business tax return was assessed under section 376 of the Tax Law. Interest of \$2,900.37 was assessed as of March 15, 1968.

CONCLUSIONS OF LAW

A. That the Statute of Limitations for assessment of normal income tax had not expired since applicants, J. Waldron and Lillian Bayles, failed to comply with section 267(2) of the Tax Law in not reporting a change or correction increasing their Federal taxable income within 90 days of such change.

B. That the Statute of Limitations for assessment of unincorporated business tax had not expired since the amount of tax due may be assessed and collected at any time if no return was filed.

C. That the activity engaged in by applicants, J. Waldron and Lillian Bayles is an unincorporated business as defined in section 386 of the Tax Law.

D. That the oysters cannot be considered in determining capital gains or losses since it cannot be classified as a capital asset under section 350 of the Tax Law.

E. That the income received from the sale of the oysters is normal income and not a capital gain.

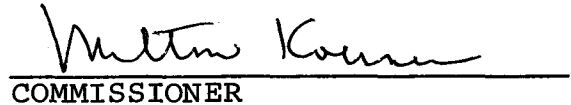
F. That the application of J. Waldron and Lillian Bayles is denied and the Notice of Additional Assessment issued March 15, 1968, is sustained.

DATED: Albany, New York
August 28, 1973

STATE TAX COMMISSION

COMMISSIONER


COMMISSIONER


COMMISSIONER