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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 and Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1960, 1961, :
1962 and 1963.

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.

Franklin J. [Signature]

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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J. WALDRON and LILLIAN BAYLES

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Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1960, 1961, 1962 and
1963

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 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. J. J.

Lynn Wilson



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
Mario A. Procaccino,
~~KOERNER, KERN, KERN, KERN, KERN~~ 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 **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690 & 722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
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

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
J. WALDRON and LILLIAN BAYLES	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1960, 1961, 1962 and 1963.	:	

Petitioners, J. Waldron and Lillian Bayles, have filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1960, 1961, 1962 and 1963. (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, petitioners, J. Waldron and Lillian Bayles, in writing, waived a formal hearing and consented to the issuance of a decision 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 the taxpayer's business constitute ordinary income or capital gain as defined in section 1231 of the Internal Revenue Code?

FINDINGS OF FACT

1. In 1959, petitioner, 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 petitioner 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 the fattening beds where they would grow to commercial size in four to five years. Petitioner would then dredge the oyster beds and sell the oysters.

2. On November 30, 1959, petitioner, 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 successive years.

3. Petitioners, J. Waldron and Lillian Bayles, filed New York State combined income tax returns for the years 1960 through 1963. They filed no New York State unincorporated business tax returns for the years 1960 through 1963.

4. On November 25, 1964, petitioners, J. Waldron and Lillian Bayles' Federal income tax returns for the years 1960 and 1961 were adjusted. On April 25, 1965, petitioners' Federal income tax returns for the years 1962 and 1963 were adjusted.

All adjustments reflected the disallowance as a capital gain allowance of income received for the sale of the oysters.

5. On April 27, 1966, petitioners, J. Waldron and Lillian Bayles, notified the Income Tax Bureau that their Federal income tax returns for the years 1960 through 1963 were adjusted.

6. On March 11, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, J. Waldron and Lillian Bayles, disallowing capital gains claimed on the sale of oysters and increasing the taxable personal income of petitioners by \$73,377.57 for 1960, \$192,207.30 for 1961, \$96,047.57 for 1962 and \$16,383.25 for 1963. Unincorporated business income was also assessed against petitioners in the amount of \$152,931.84 for 1960, \$377,797.57 for 1961, \$434,745.96 for 1962 and \$59,655.66 for 1963. Accordingly a Notice of Deficiency was issued increasing petitioners' personal income tax by \$37,068.81 for the years 1960 through 1963. Unincorporated business tax was assessed for \$39,405.24. A penalty of \$9,851.32 was assessed against petitioner for failure to file an unincorporated business tax return under section 685(a) of the Tax Law. A penalty of \$242.51 was assessed for failure to file a declaration or underpayment of estimated tax for the years 1960 and 1961 under section 685(c) of the Tax Law. The Notice of Deficiency was for the sum of \$112,561.47.

CONCLUSIONS OF LAW

A. That the Statute of Limitations for assessment of personal income tax had not expired since petitioners, J. Waldron and

Lillian Bayles, failed to comply with section 659 of the Tax Law in not reporting a change or correction increasing their Federal taxable income within 90 days of such change. That the Income Tax Bureau did comply with section 683 of the Tax Law in assessing tax due within three years after notification of Federal adjustments.

B. That the Statute of Limitations for assessment of unincorporated business tax had not expired since no return was filed pursuant to section 683(c)(1)(A) of the Tax Law.

C. That the activities engaged in by petitioners, J. Waldron and Lillian Bayles, can be classified as an unincorporated business as defined in section 703 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 1221(1) of the Internal Revenue Code.

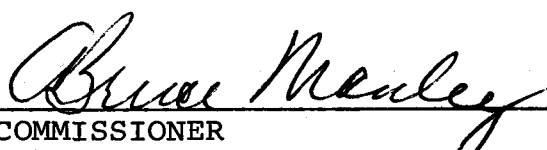
E. That the income received from the sale of the oysters is ordinary income and not a capital gain.

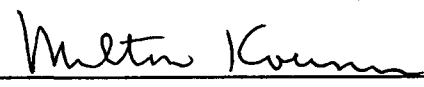
F. That the petition of J. Waldron and Lillian Bayles is denied and the Notice of Deficiency issued March 11, 1968, is sustained.

DATED: Albany, New York
August 28, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER