

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

E. JOHN and VIRGINIA MATHERON

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 and 23 of the
Tax Law for the ~~XXXX(s)~~ F/Y/E
August 31, 1962.

State of New York
County of Albany

JANET MACK, 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 24th day of March, 1975, she served the within
Notice of Decision ~~(on Redetermination)~~ by (certified) mail upon E. JOHN and
VIRGINIA MATHERON ~~(representative of the)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. E. John Matheron
3217 North East 5th Court
Pompano Beach, Florida 33062
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 the)~~
~~of the~~ 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

24th day of March, 1975.

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

E. JOHN and VIRGINIA MATHERON

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 and 23 of the
Tax Law for the ~~Year(s)~~ F/Y/E :
August 31, 1962.

State of New York
County of Albany

JANET MACK , 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 24th day of March , 19 75, she served the within
Notice of Decision (~~for Redetermination~~) by (certified) mail upon JOSEPH H. FISHER

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Joseph H. Fisher
30 Bedell Street
Freeport, New York 11520

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

24th day of March , 1975

Patricia D. Manly

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Saul Heckelman, Acting President

A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A

STATE CAMPUS

ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
March 24, 1975

Mr. and Mrs. E. John Matheron
3217 North East 5th Court
Pompano Beach, Florida 33062

Dear Mr. and Mrs. Matheron:

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

Please take further notice that pursuant to
Section(s) **690 and 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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

E. JOHN AND VIRGINIA MATHERON:

DECISION

for a Redetermination of a Deficiency :
of for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the F/Y/E August 31, 1962. :

E. John and Virginia Matheron filed a petition for the redetermination of a deficiency issued August 15, 1966, for unincorporated business taxes under Article 23 of the Tax Law for the f/y/e August 31, 1962, in the amount of \$2,301.11, with interest of \$506.24 for a total of \$,807.35 against which a credit will be made for an overpayment of personal income tax and interest thereon.

A hearing was duly held on April 25, 1974, at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Joseph H. Fisher of Freeport, New York. The Income Tax Bureau was represented by Saul Heckelman, Esquire, (appearing by Francis X. Boylan, Esquire, of counsel). The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case are, (1) whether certain land, which was the subject of a sale, had been used for business purposes and, (2) whether such sale of land, which was used for business purposes, is to be considered as a part of the liquidation of the business.

FINDINGS OF FACT

1. Petitioners in 1962 were residents of New York. Petitioners had been in the business of raising carnations in hothouses on land they owned in Baldwin, Long Island, and in wholesaling the carnations.

2. The land occupied by petitioners was about 7,096 acres in area. Of this, an area at one corner fronting on Centennial Avenue and Forest Avenue and consisting of 1,082 acres had been inherited and had always been used for residential purposes. The major portion of the parcel consisted of about three-and-a-half acres fronted on Centennial Avenue. This contained the hothouses. Another portion of about two acres fronted on Forest Avenue and had been purchased by petitioner. The last portion of about one-half acre was located at the northwest corner of the parcel. This had access only by one street which "dead ended" at the petitioner's property. It has not been shown that petitioner's land other than one corner parcel was ever used for non-business purposes.

3. Petitioners contracted to sell their land on December 11, 1961, to a person who intended to subdivide the property for individual residences. Petitioners ceased to do business in March, 1962 and dismantled some of the business structures on the property. On August 14, 1962, petitioners conveyed title. The purchaser dismantled the remaining business structures - the hothouses.

4. The deficiency is based on considering the entire parcel of land as business property so that the sale thereof is taxable under the unincorporated business tax.

CONCLUSIONS OF LAW

A. The one corner parcel here found to be used for residential purposes should be considered to be not used in the business. The value of this parcel is determined to be 15 percent of the value of the entire parcel based on relative acreage. The arguments of the petitioner based upon theories of valuation assigning higher values to front and corner parcels are found to be speculative in the absence of any testimony or reports from qualified real estate appraisers.

B. An unincorporated business includes any business "engaged in or being liquidated" (Tax Law section 703(a)). The land here in question was at one time used in the business. In fact, the contract of sale of this land was signed while it was still used in the business. Its use by the petitioners was never changed to a non-business use and is a sale taxable as business property. (See Graves Bros. Co., 17 TC 1499 at 1506-7; Comm. v. Court Holding Co., 324 U.S. 331; Cohn v. Graves, 254 App. Div. 918.)

DECISION

The deficiency less credit due for personal income tax is recomputed to be \$1,389.46 with net interest of \$192.45 to August 15, 1966 and with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
March 24, 1975

STATE TAX COMMISSION

COMMISSIONER

Bruce M. Moulton

COMMISSIONER

Milton K. Kohn

COMMISSIONER