

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

C. KYRIE KALLAS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1965 & 1966.

State of New York
County of Albany

Bruce Batchelor , 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 8th day of December , 1976 , she served the within
Notice of Decision by (certified) mail upon C. Kyrie
Kallas ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. C. Kyrie Kallas
2381 Ocean Avenue
Brooklyn, 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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative~~
~~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

8th day of December , 1976

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 8, 1976

TELEPHONE: (518) 457-3850

Mr. C. Kyrie Kallas
2381 Ocean Avenue
Brooklyn, New York

Dear Mr. Kallas:

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.

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. They
will be referred to the proper party for reply.

Very truly yours,

PAUL B. COBURN
SUPERVISING TAX
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
C. KYRIE KALLAS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1965 and 1966.	:	

Petitioner, C. Kyrie Kallas, residing at 2381 Ocean Avenue, Brooklyn, New York, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1965 and 1966. (File No. 0-0001299).

A formal hearing was scheduled before Julius E. Braun, Esq., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, for May 6, 1976, at 2:45 P.M. Prior to said date, petitioner waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUES

I. Whether all depreciation must be recaptured initially on the gain of section 1245 property sold on installments before any capital gain is allowed.

II. Whether the gain received in 1966 on the sale in 1965 of the property was subject to unincorporated business tax for the year 1966, and if subject to said tax whether his services were deductible.

FINDINGS OF FACT

1. Petitioner, C. Kyrie Kallas, with his wife, Virginia Kallas, timely filed New York State combined income tax returns for the years 1965 and 1966, and an unincorporated business tax return for 1965. They failed to file an unincorporated business tax return for 1966.

2. On June 24, 1968, the Income Tax Bureau issued a Statement of Audit Changes, against petitioner, C. Kyrie Kallas, adjusting the reportable gain upon the disposition of section 1245 property as ordinary income. A similar adjustment was made on the total gain for unincorporated business tax for the year 1965. In 1966, a refund of excess gain computed under section 1245 was allowed by the Income Tax Bureau.

3. Petitioner, C. Kyrie Kallas, was actively engaged for part of the year 1965 in a business which he sold upon installments, on July 27, 1965. He had claimed depreciation in previous years on the

business property. The cost of this business, plus expenses of sale were \$28,590.58, and the sale price was \$63,000.00. The depreciation up to January 1, 1965, amounted to \$14,266.38. The installment paid by the purchaser in 1965 amounted to \$17,000.00.

Net Sales Price	\$63,000.00
Cost of machinery, equipment and expense of sale	\$28,590.58
Depreciation to 1/1/65	\$14,266.38
Adjusted basis	<u>14,324.20</u>
Profit Total	\$48,675.80

$\frac{\$48,675.80}{\$63,000.00} = 77.26\%$ of installment to be recaptured

Adjustment to periods after December 31, 1961	\$ 9,850.82
77.26% X \$17,000.00 = \$13,134.20 profit	
Section 1245 adjustments	\$ 9,850.82
Balance taxable at 50% [$\frac{1}{2}$ (\$13,134 - 9,850.82)]	<u>1,641.69</u>
Total taxable gain	\$11,492.51

4. In 1966, petitioner, C. Kyrie Kallas, received a \$12,000.00 installment payment from the purchaser for the liquidated business. He reported a section 1245 gain in 1966 of \$1,876.49.

CONCLUSIONS OF LAW

A. That where section 1245 property (personal property subject to allowance for depreciation) is disposed of, and the amount realized exceeds the adjusted basis of said property, it shall be considered as a gain of ordinary income, in accordance with the meaning and intent

C. That pursuant to Fishel v. State Tax Commission, 48 A.D. 2d 381, 370 N.Y.S. 2d 230, and in Matter of Liendecker v. State Tax Commission, 11 AD 2d 747 affd. 9 NY 2d 707, mere receipt of income pursuant to a contract subsequent to liquidation of a business was not income of an unincorporated business pursuant to any applicable provisions of the Tax Law. Therefore, the receipt in 1966 by petitioner, C. Kyrie Kallas, of \$12,000.00 for the installment payment on the sale of his business was not income of an unincorporated business, and the gain so received was not subject to unincorporated business tax.

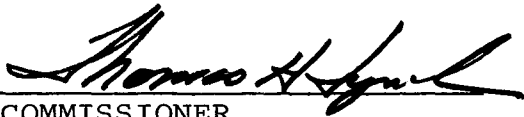
D. That the petition of C. Kyrie Kallas is granted to the extent of cancelling the unincorporated business tax due, and granting a refund in full for the excess section 1245 gain for the year 1966; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued June 24, 1968; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
December 8, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER