

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FLORENTO G. SACCOMANNO &
JOSEPHINE SACCOMANNO

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 ~~(XXXX Period(s))~~ 1971..

State of New York
County of Albany

Carmen Mottolese, 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 13th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Florento G. Saccomanno &
Josephine Saccomanno ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Florento G. Saccomanno
Cobles Stone Drive
Clay, New York 12041
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)~~
~~XXXX~~ 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

13th day of September, 1976.

Carmen Mottolese

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

September 13, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. Florento G. Saccomanno
Cobles Stone Drive
Clay, New York 12041

Dear Mr. & Mrs. Saccomanno:

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.

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,

[Signature]
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	:	
FLORENTO G. SACCOMANNO	:	
and	:	
JOSEPHINE SACCOMANNO	:	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 year 1971.	:	

Petitioners, Florento G. Saccomanno and Josephine Saccomanno, residing at Cobles Stone Drive, Clay, New York 13041, have filed a petition for a 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 year 1971. (File No. 00622). A formal hearing was held before Julius E. Braun, Esq., Hearing Officer, at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on April 1, 1976 at 9:15 A.M. Petitioner, Florento G. Saccomanno appeared pro se and for Josephine Saccomanno, his wife. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Whether petitioners are liable for income and unincorporated business taxes upon an award made to them from a condemnation proceeding when said award was distributed to a creditor-mortgagee pursuant to a court order.

FINDINGS OF FACT

1. Petitioners, Florento G. Saccomanno and Josephine Saccomanno, timely filed a New York State income tax return and an unincorporated business tax return for the year 1971.

2. On August 15, 1974, as a result of audit, the Income Tax Bureau, issued a Notice and Demand for Payment of Tax Due Under Jeopardy Assessment against petitioners Florento G. Saccomanno and Josephine Saccomanno in the amount of \$18,145.28, plus interest of \$1,973.84, for a total of \$20,119.12.

3. Petitioners, Florento G. Saccomanno and Josephine Saccomanno, received a condemnation award in the Court of Claims on February 1, 1971 for property taken in 1968 for the Euclid-North Syracuse project in the amount of \$134,521.00 plus accrued interest. The award was held in escrow in an Albany bank pending litigation by creditors against petitioners. Liens were satisfied out of the award money held in escrow and distribution was made to the mortgagee at the direction of Special Term of the Supreme Court held in May of 1972.

4. Petitioners, Florento G. Saccomanno and Josephine Saccomanno, have failed to submit any documentary or other evidence sufficient to substantiate the cost or other basis of the property taken by condemnation.

CONCLUSIONS OF LAW

A. That gross income means all income from whatever source derived, including gains derived from dealings in property, pursuant to section 61a of the Internal Revenue Code. The gain derived from the dealings in property which was the subject of the condemnation award by the Court of Claims is such income within the meaning and

intent of section 61(a) of the Internal Revenue Code.

B. That for any taxable year, if the net long term capital gain exceeds the net short term capital loss, 50% of the amount shall be a deduction from gross income, pursuant to section 1202 of the Internal Revenue Code. That the net long term capital gain of petitioners Florento G. Saccomanno and Josephine Saccomanno exceeded capital loss. Fifty percent of said amount then was added to their personal income was within the meaning and intent of section 1202 of the Internal Revenue Code.

C. That gross income means all income from whatever source derived including interest, pursuant to section 61(a) of the Internal Revenue Code. That the interest received by petitioners Florento G. Saccomanno and Josephine Saccomanno upon the condemnation award held in escrow within an Albany bank was income within the meaning and intent of section 61(a) of the Internal Revenue Code.

D. That gross income of an unincorporated business means the sum of the items of income and gain of the business of whatever kind and in whatever form paid including income and gain from any property employed in the business pursuant to section 705(a) of the Tax Law. That the total compensation award (including interest) received by the petitioners, Florento G. Saccomanno and Josephine Saccomanno, was gross income of their unincorporated business within the meaning and intent of section 705(a) of the Tax Law.

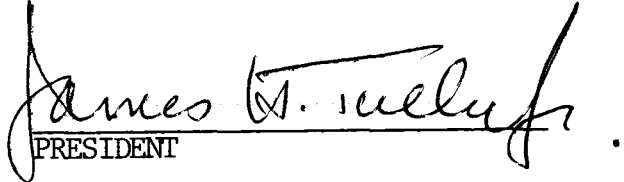
E. That the minimum taxable income of a resident individual shall be the sum of the items of tax preference reduced by the tax determined by section 602 of the Tax Law, pursuant to section 622 of the Tax Law.

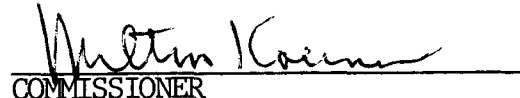
That the minimum taxable income of petitioners Florento G. Saccomanno and Josephine Saccomanno was the total sum of the tax preference less tax paid pursuant to section 602 of the Tax Law and was within the meaning and intent of section 622 of the Tax Law.

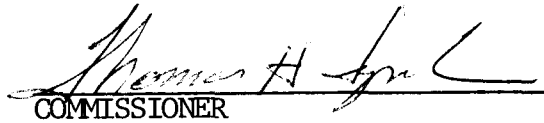
F. That the petition of Florento G. Saccomanno and Josephine Saccomanno is denied and the Notice and Demand for Payment of Tax Due Under Jeopardy Assessment issued August 15, 1974 is sustained.

DATED: Albany, New York
September 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER