

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LE ROY and EUNICE HAFELE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of ~~Personal Income and~~ :
~~Unincorporated Business~~ :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1972.:

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 27th day of April, 1977, he served the within
Notice of Decision by (certified) mail upon LeRoy & Eunice Hafele

(~~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. LeRoy Hafele
52 Elm Street
Delhi, New York 13753

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

27th day of April, 1977.

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

April 27, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. LeRoy Hafele
52 Elm Street
Delhi, New York 13753

Dear Mr. & Mrs. Hafele:

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,
Frank J. Puccia

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LE ROY and EUNICE HAFELE	:	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 Year 1972.	:	
	:	

Petitioners, LeRoy and Eunice Hafele, 52 Elm Street, Delhi, New York 13753, 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 year 1972. (File No. 2-22202102).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, Binghamton, New York, on October 21, 1976, at 2:45 P.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (James Scott, Esq., of counsel).

ISSUE

Was the gain on the sale of real property owned by the petitioners, LeRoy and Eunice Hafele, subject to unincorporated business tax?

FINDINGS OF FACT

1. Petitioners, LeRoy and Eunice Hafele, filed a New York State combined income tax resident return for 1972. Petitioner, Eunice Hafele, filed a New York State unincorporated business tax return for 1972. On the unincorporated business tax return, she stated that the retail ladies wear shop operated by her was terminated on August 1, 1972.

2. On April 14, 1976, the Income Tax Bureau issued a Notice of Deficiency against the petitioners, LeRoy and Eunice Hafele, for additional personal income tax due of \$377.67, additional unincorporated business tax due of \$413.39, and interest in the sum of \$177.50. The Income Tax Bureau asserted that the sale of real property owned by the petitioners and employed in their business, was a sale of business assets and that the gain on this sale was subject to the unincorporated business tax. The petitioners are not contesting the additional personal income tax due.

3. In 1943 and 1945, petitioners, LeRoy and Eunice Hafele, purchased real property located at 78 and 80 Main Street, Delhi, New York, respectively. The properties were contiguous and the existing building on lots 78 and 80 were attached, but had separate apartments and business shops. Mr. Hafele operated a barber shop at the 78 Main Street location from 1943 until 1966, and subsequently rented the shop to another barber until the building was sold in 1972. The petitioners leased the 80 Main Street property to the Delhi Specialty Shop from 1945 until the property was sold in 1972. Mrs. Hafele was a 50% partner in the Delhi Specialty Shop

until the mid 1960's at which time she purchased the remaining share of the business and operated such business as a sole proprietorship. The second floor apartments at both locations were continuously rented to tenants.

4. Petitioners, LeRoy and Eunice Hafele, sold the 78 and 80 Main Street properties on July 1, 1972.

5. Petitioners, LeRoy and Eunice Hafele, contend that the properties located at 78 and 80 Main Street, Delhi, New York, were not business assets of the Delhi Specialty Shop. They also contend that the rental payments from Delhi Specialty Shop owned by Eunice Hafele to LeRoy Hafele clearly show that such property was not an asset of the Delhi Specialty Shop.

CONCLUSIONS OF LAW

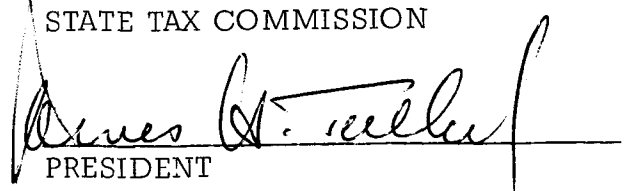
A. That the real property owned by the petitioners, LeRoy and Eunice Hafele, was connected and integrated with the unincorporated business operated by Mrs. Eunice Hafele so as to be deemed a business asset.

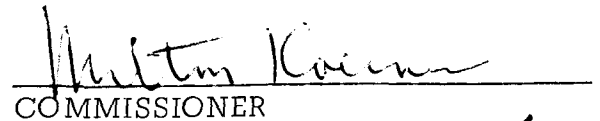
B. That the gain from the sale of real property received by petitioners, LeRoy and Eunice Hafele, in the year 1972 was unincorporated business gross income within the meaning and intent of section 705(a) of the Tax Law.

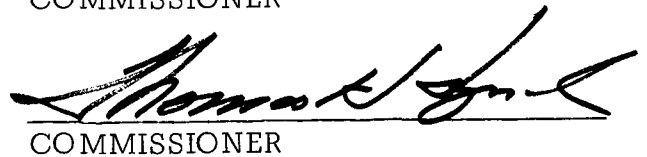
C. That the petition of LeRoy and Eunice Hafele is denied
and the Notice of Deficiency dated April 14, 1976, is sustained.

DATED: Albany, New York
April 27, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER