

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AULTON E. HANEY	:	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 1966.	:	

Petitioner, Aulton E. Haney, residing at 10 Collins Avenue, East Hampton, New York 11937, 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 year 1966. (File No. 01133).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 16, 1976 at 1:15 P.M. Petitioner appeared by Walter Preisch, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Arthur Rosen, Esq., of counsel).

ISSUE

Whether petitioner was entitled to deduct the cost of a building and the cost of demolition of the building in the year 1966.

FINDINGS OF FACT

1. Petitioner, Aulton E. Haney, filed New York State personal income tax and unincorporated business tax returns for the year 1966. On said returns, the taxpayer included in the computations, the cost of a building he purchased, which was demolished in the taxable year in question, plus the cost of its demolition as business expenses.

2. On April 1, 1968, the Income Tax Bureau issued a Statement of Audit Changes to petitioner, Aulton E. Haney, stating additional personal income tax due for 1966, based on the disallowance of the deduction for the loss of the building (\$32,375.22) and \$1,000.00 for each of 1964, 1965 and 1966, as a carryover loss resulting in an additional personal income tax liability of \$3,506.83, plus interest. Additional unincorporated business tax, based on the same disallowance, was computed to be due in the sum of \$1,209.61, plus interest. Accordingly, a Notice of Deficiency dated April 1, 1968 in the sum of \$4,716.44, plus interest, was issued.

3. The taxpayer only contests the disallowance of the business expense deduction in 1966 and does not protest the disallowance of carryover losses of \$1,000.00 in 1964, 1965 and 1966.

4. Petitioner, Aulton E. Haney, operated a grocery store in East Hampton, New York. In the years 1963 through 1965, petitioner leased the first floor of the building adjacent to his store which he utilized as a supplementary warehouse. This building was a two-floor structure and two tenants occupied the second floor thereof.

5. Petitioner retained the services of an architectural firm in July of 1965 to submit applications for a zoning variance on this adjacent property. In the fall of 1965, the architects were requested to draft the design and construction plans therefor.

6. On September 17, 1965, petitioner entered into an agreement with Peter Fedi for the purchase of two parcels of land, which comprised the adjacent property, the building being situated on one of the parcels. The contract provided that both parcels lie wholly within a Retail Business Classification (Zone) within the meaning of the Building Zone Ordinance of the Town of East Hampton; that the purchase price is \$30,000.00; and that the seller stipulates and covenants to take all steps to terminate the two existing tenancies as soon as possible, so that the premises may be delivered free of tenancies. The contract further provided for delivery of the deed on October 16, 1975.

7. The transfer of title occurred some time in December of 1965.

8. No remodeling or substantial improvements were made to the building before or after acquisition. The attachment of the building to the grocery store was a project which would require prohibitive costs and such project would not be permissible under the local zoning ordinance.

9. Demolition of the building commenced in January of 1966.

10. The petitioner deducted the cost of the building at \$30,175.22 and the cost of demolition as "other business expenses" on his Federal Schedule C, Form 1040 for 1966. That return contained the explanation "Building next door purchased for addition to store. After being used for one month as a warehouse, it was found to be unfit for use and had to be torn down."

CONCLUSIONS OF LAW

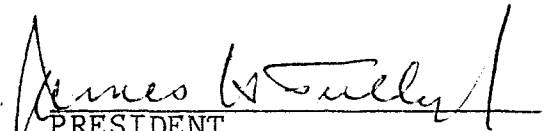
A. That the availability of the deduction for the cost of a demolished building and the cost of demolition thereof, when in the course of a trade or business real property is purchased, depends on the intention of the purchaser at the time of the purchase. When the purchaser intends to immediately or subsequently demolish the building on the property, no deduction is allowed under section 165(a) of the Internal Revenue Code. (Treasury Regulations Reg. §1.165-3(a)(1)).


B. That since petitioner, Aulton E. Haney, Knew the condition of the building prior to its purchase and did intend to demolish the building on or after its purchase, no deduction for such demolition or the cost thereof is available pursuant to Conclusion of Law "A", above.

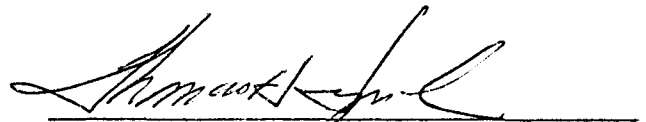
C. That the petition of Aulton E. Haney is denied and the Notice of Deficiency issued April 1, 1968 is sustained.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER