

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOSEPH SCHRADER, HELEN SCHRADER AND :
BERTHA SCHRADER, individually and as :
copartners :
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)~~ 1968. :

AFFIDAVIT OF MAILING

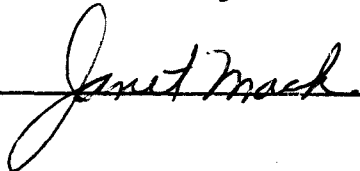
State of New York
County of Albany

Marsina Donnini , 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 16th day of August , 1977, she served the within
Notice of Decision by (certified) mail upon Joseph Schrader, Helen
Schrader & Bertha Schrader
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph Schrader, Helen Schrader and
Bertha Schrader, Individually & as copartners
701 County Road #9
Victor, New York 14564
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

16th day of August , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOSEPH SCHRADER, HELEN SCHRADER AND :
BERTHA SCHRADER, individually and as :
copartners :
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 ~~(or Period)~~ 1968:

AFFIDAVIT OF MAILING

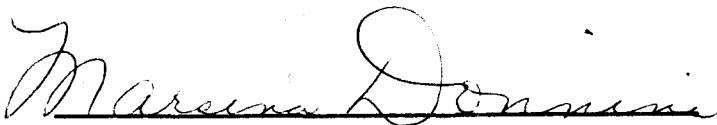
State of New York
County of Albany

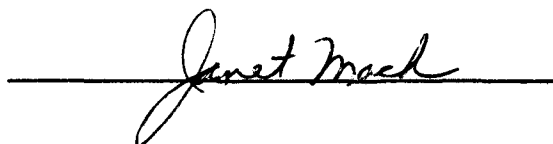
Marsina Donnini, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Adam DiGennaro
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Adam DiGennaro, Esq.
19 West Main Street
Rochester, New York 14614
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

16th day of August, 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 16, 1977

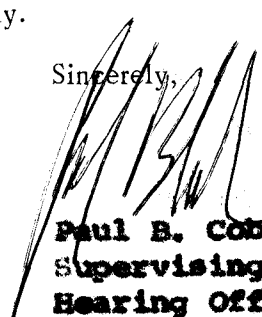
**Joseph Schrader, Helen Schrader and
Bertha Schrader, Individually & as copartners
701 County Road #9
Victor, New York 14564**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690 & 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


**Paul B. Coburn
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petitions :
of :
JOSEPH SCHRADER, HELEN SCHRADER AND :
BERTHA SCHRADER, individually and as :
copartners : 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 1968.

Petitioners, Joseph Schrader, Helen Schrader and Bertha Schrader, individually and as copartners, 701 Country Road #9, Victor, New York 14564, filed petitions for redetermination of a deficiency or for refund of personal income tax and unincorporated business tax under Articles 22 and 23 of the Tax Law for the year 1968. (File Nos. 01591, 01592 and 01593).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on October 19, 1976 at 2:45 P.M., and continued on March 8, 1977 at 9:15 A.M. The petitioners appeared by Adam Digennaro, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioners, Joseph Schrader, Helen Schrader and Bertha Schrader, could allocate attorney's fees as expenses deductible from interest income on a condemnation award in the year 1968.

II. Whether gain on a condemnation award in 1968 by petitioners, Joseph Schrader, Helen Schrader and Bertha Schrader, was subject to unincorporated business tax within the meaning and intent of section 703 of the Tax Law, as gain on property used in the business of farming.

FINDINGS OF FACT

1. On October 26, 1970, a Statement of Audit Changes was issued against the petitioner, Joseph Schrader, imposing additional personal income tax for the year 1968, consisting of a deficiency of \$90.67 and \$8.33 in interest, upon the grounds that no part of expenses in connection with a condemnation award are allocable to the collection of interest on the award. Accordingly, a Notice of Deficiency was issued totalling \$99.00.

2. On October 26, 1970, a Statement of Audit Changes was issued against the petitioner Helen Schrader, imposing additional personal income tax for the year 1968, consisting of a deficiency of \$90.67 and \$8.33 in interest, upon the grounds that no part

of the expenses in connection with a condemnation award are allocable to the collection of interest on the award. Accordingly, a Notice of Deficiency was issued totalling \$99.00.

3. On November 30, 1970, a Statement of Audit Changes was issued against the petitioner, Bertha Schrader, imposing additional personal income tax for the year 1968, consisting of a deficiency of \$140.90 and \$13.73 in interest, upon the grounds that no part of the expenses in connection with a condemnation award are allocable to the collection of interest on the award. Accordingly, a Notice of Deficiency was issued totalling \$154.63.

4. On October 26, 1970, a Statement of Audit Changes was issued against petitioners, Joseph Schrader, Helen Schrader and Bertha Schrader, as individuals and as co-partners, imposing unincorporated business tax for the year 1968, consisting of a deficiency of \$7,089.05 plus \$650.77 in interest, upon the grounds that gain on condemnation of farm land is subject to unincorporated business tax. Accordingly, a Notice of Deficiency was issued totalling \$7,739.82.

5. The petitioners, Joseph Schrader, Helen Schrader and Bertha Schrader, were engaged in the business of farming in the year 1964. On January 15, 1964, certain land owned by the petitioners in Victor, New York, was appropriated by the State of

New York by condemnation. The petitioners acquired the land as tenants in common on December 7, 1959, by a quitclaim deed from Bertha Schrader, who had acquired same by quitclaim deed from John Schrader on May 3, 1956. The petitioners used this land in their farming business until it was appropriated by the State of New York. In 1968, they received a condemnation award of \$148,891.85.

6. In a letter dated December 1, 1969, Milton Fisher, CPA, on behalf of the petitioner, Joseph Schrader, responded to a letter of the Income Tax Bureau dated November 14, 1969, stating that the property in issue was being used as a farm prior to appropriation by the State of New York.

7. The deficiencies in Findings of Fact "1", "2" and "3" with reference to the allocation of attorney's fees as expenses deductible from interest income on a condemnation award were all conceded at the formal hearing by the petitioners.

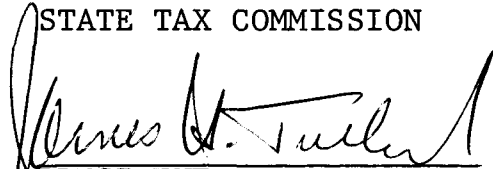
CONCLUSIONS OF LAW

A. That the income received by the petitioners, Joseph Schrader, Helen Schrader and Bertha Schrader, in the year 1968, from the involuntary conversion of property utilized in their unincorporated business of farming, was subject to unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

B. That the petitions of Joseph Schrader, Helen Schrader and Bertha Schrader, individually and as copartners are denied, and the notices of deficiency issued October 26, 1970 and November 30, 1970 are sustained.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER