

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Edward Cohen :
Joan Cohen Gallant : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Year 1969. :

State of New York
County of Albany

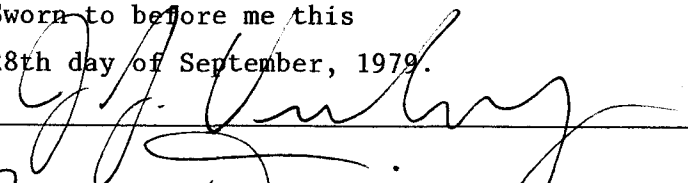
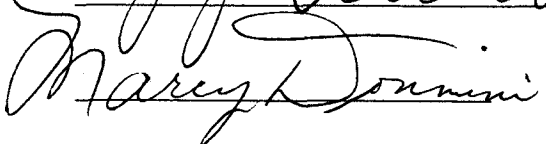
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Estate of Edward Cohen, Joan Cohen Gallant, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Edward Cohen
Joan Cohen Gallant
150 E. 69th St.
New York, NY 10021

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

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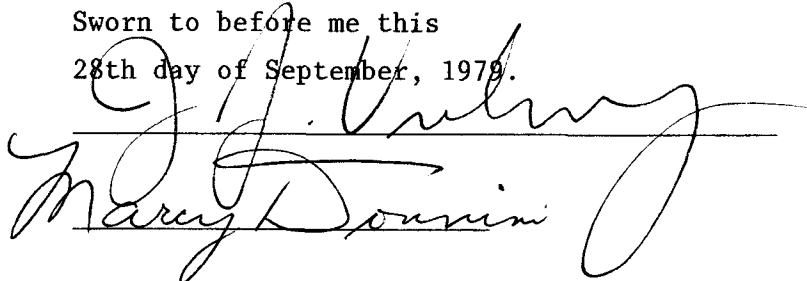
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Robert S. Raum the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Robert S. Raum
210 E. 52nd St.
New York, NY 10022

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
28th day of September, 1979.


Mary L. Dourin



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Estate of Edward Cohen
Joan Cohen Gallant
150 E. 69th St.
New York, NY 10021

Dear Mrs. Gallant:

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 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,

A handwritten signature in cursive script, appearing to read "Robert S. Raum".

cc: Petitioner's Representative
Robert S. Raum
210 E. 52nd St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
THE ESTATE OF EDWARD COHEN : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1969. :
:

The Estate of Edward Cohen, c/o Joan Cohen Gallant, Executrix, 150 East 69th Street, New York, New York 10021, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1969 (File No. 12562).

A formal hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 11, 1978 at 10:15 A.M. Petitioner appeared by Robert S. Raum, Esq. (John J. Hess, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq. and Irving Atkins, Esq., of counsel).

ISSUES

Whether a capital gain realized on the condemnation of a parcel of real property is taxable to the Estate of Edward Cohen and, if so, what is the basis to be used in calculating the gain.

FINDINGS OF FACT

1. At the time of his death on March 25, 1956, Edward Cohen was the owner of an undivided one-fourth interest in a vacant parcel of land located in the Town of Orangetown, Rockland County, New York.

2. The parcel was condemned by the State of New York and title vested in the State on June 14, 1966. The total condemnation award was \$190,000.00. The cost basis of the land was \$90,935.42 and expenses were \$8,932.57.

3. The Income Tax Bureau determined that the total long-term capital gain on the condemnation award was \$90,132.01. It calculated that the Estate's share of the gain was \$22,533.00, and that the Estate's share of interest on the award was \$856.53. Accordingly, on April 11, 1975, the Bureau issued a Notice of Deficiency against the Estate of Edward Cohen for \$561.84.

4. The undivided one-fourth interest of Edward Cohen was transferred to Joan Cohen Gallant, Edward Cohen's widow and beneficiary, on May 29, 1958. Administration of the Estate of Edward Cohen was completed prior to 1960.

CONCLUSIONS OF LAW

A. That since the Estate of Edward Cohen was not the owner of the land at the time of the condemnation award, it did not realize a gain at the time of the award. Any such gain would have been realized by and taxable to the owner of the interest at the time of the award, to wit, Joan Cohen Gallant, individually.

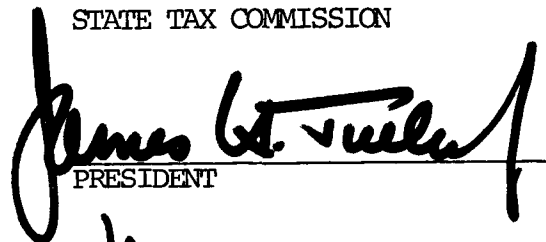
B. That in view of Conclusion of Law "A", no determination is necessary in this proceeding as to the Estate's basis for its share of the land in question.

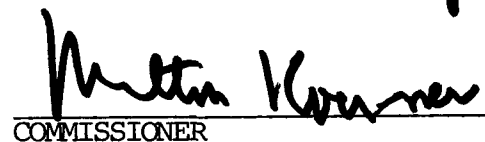
C. That the petition of the Estate of Edward Cohen is granted and the Notice of Deficiency dated April 11, 1975 is cancelled.

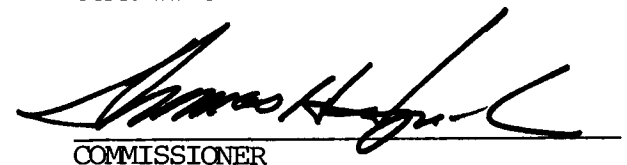
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO....Paul. Coburn.....

Please file.

ESTATE OF EDWARD COHEN
JOAN COHEN GALLANT

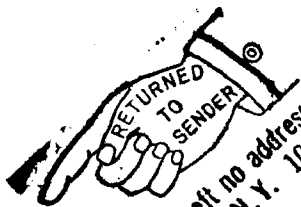
October 23, 1979

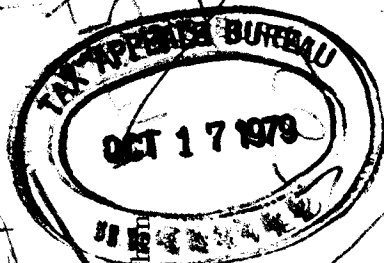
M-75 (5/76)

From Robert F. Mulligan

TA-26 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

 RETURNED
TO
SENDER
Moved, Left no address
NEW YORK, N. Y. 10022



Estate of Edward Collins
Joan Cohen Gallant
150 E. 60th St.
New York, NY 10021

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Estate of Edward Cohen
Joan Cohen Gallant
150 E. 69th St.
New York, NY 10021

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Sincerely,



cc: Petitioner's Representative
Robert S. Raum
210 E. 52nd St.
New York, NY 10022
Taxing Bureau's Representative

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- B. That in view of Conclusion of Law "A", no determination is necessary in this proceeding as to the Estate's basis for its share of the land in question.
- C. That the petition of the Estate of Edward Cohen is granted and the Notice of Deficiency dated April 11, 1975 is cancelled.

DATED: Albany, New York
SEP 28 1979

STATE TAX COMMISSION

James W. Tuck
PRESIDENT
Melton Koe
COMMISSIONER