

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FRED COLIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1973.

State of New York
County of Albany

John Huhn, 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 8th day of February, 1979, he served the within

Notice of Decision by (certified) mail upon Fred Colin

~~representative of~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Fred Colin
8 Hickory Hill
Roslyn Estates, NY 11576

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

Sworn to before me this
8th day of February, 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRED COLIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article(s) 22 of the
Tax Law for the Year(s) ~~XXXXXX~~
1973.

State of New York
County of Albany

John Huhn, 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 8th day of February, 1979, she served the within

Notice of Decision by (certified) mail upon Rubin, Baum, Levin,
Constant &
Friedman, Esqs. (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Rubin, Baum, Levin, Constant & Friedman, Esqs.
645 Fifth Avenue
New York, New York 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

8th day of February, 1979.

Marilyn J. Papineau

John Huhn



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

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

February 8, 1979

**Mr. Fred Colin
8 Hickory Hill
Roslyn Estates, New York 11576**


Dear Mr. Colin:

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,


**Michael Alexander
Supervisor of
Formal Hearing Unit**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
FRED COLIN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Year :
1973. :

Petitioner, Fred Colin, 8 Hickory Hill, Roslyn Estates, New York 11576, 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 1973 (File No. 13788).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 18, 1977 and was continued on October 19, 1977. Petitioner appeared by Rubin, Baum, Levin, Constant & Friedman, Esqs. (Paul H. Asofsky, Esq. and Steven Stuchiner, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

I. Whether petitioner recognized a long-term capital gain in 1973 as a result of the condemnation by New York State of a portion of certain unimproved land located at Town Line Road and Hauppauge-Nesconset Road, Hauppauge, New York (hereinafter "Hauppauge Property"), for which he received partial payment in 1971.

II. Whether the condemnation award with respect to the Hauppauge Property specifically included severance damages which are to be excluded from the computation of capital gain.

III. Whether the claimed replacement property acquired in 1975 was so acquired within two years after the close of the first taxable year (i.e., 1971) in which any part of the gain was realized.

FINDINGS OF FACT

1. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner, imposing additional personal income taxes of \$7,477.36, plus interest of \$1,000.17, for a total of \$8,477.53. Said deficiency was imposed on the basis of a long-term capital gain claimed to be due as a result of petitioner's receipt of a condemnation award by the State of New York. Petitioner timely filed a petition with respect to said Notice.

2. The Statement of Audit Changes computed the gain as follows:

"Total amount received on condemnation award	\$180,025.00
Cost of replacement property	<u>110,000.00</u>
Capital gain on condemnation award	\$ 70,025.00
60% of Long Term Capital Gain Taxable to New York State	\$ 42,015.00"

The Statement of Audit Changes also stated, in part, that "The replacement period ends after the close of the first year in which the gain from a condemnation award is realized."

3. For 1973 and prior thereto, petitioner reported his income on a cash calendar-year basis.

4. In 1969 petitioner acquired title as owner in fee simple to unimproved vacant land located at Town Line Road and Hauppauge -Nesconset Road, Hauppauge, Suffolk County, New York ("the Hauppauge Property"), consisting of 2,098 acres. He intended to erect an office building on this land. On January 20, 1969, the New York State Department of Transportation notified petitioner that it had decided to acquire, by condemnation, the Hauppauge Property designated as "Hauppauge Spur - Route 347, Long Island Expressway to Veterans Memorial Highway," viz., .721 acres. Title to the aforementioned portion of the Hauppauge Property was vested in the State of New York on August 24, 1970.

5. On or about August 19, 1971, petitioner received a first and partial payment of \$46,081.00, of which \$43,500.00 represented the first principal payment, the balance representing interest (with respect to the Hauppauge Property). Petitioner incurred expenses in connection with the Hauppauge condemnation of \$3,612.84. On October 1, 1973, petitioner received a second and final payment of \$101,460.00, of which \$85,500.00 represented principal and \$15,960.00 represented interest.

6. Petitioner and the representative for the Income Tax Bureau stipulated at the hearing that the maximum basis for the entire Hauppauge property was \$47,403.22.

7. The Income Tax Bureau conceded that on July 10, 1972, petitioner purchased property at a cost of \$110,000.00 to replace the Hauppauge Property.

8. Petitioner contends that he purchased additional property on July 3, 1975 in the amount of \$280,010.00, to replace the aforementioned Hauppauge Property.

9. On his Federal income tax return for 1971, petitioner stated that he had received condemnation awards from New York State of \$81,268.75, and that capital gains thereon were being deferred.

10. On his Federal income tax return for 1973, petitioner stated that he had received condemnation awards of \$129,000.00 from New York State, but was deferring the capital gain thereon.

11. Petitioner contends that the award with respect to the Hauppauge property included severance damages. The appraiser for petitioner merely claimed severance damages as an alternative. The agreement of adjustment with respect to the Hauppauge property did not specify that any portion thereof was in consideration of severance damages.

12. The expenses in connection with the condemnation awards in 1971 and 1973 amounted (in the aggregate) to \$11,940.84.

CONCLUSIONS OF LAW

A. That petitioner has failed to present sufficient evidence as to the award of severance damages (as claimed) with respect to the Hauppauge Property condemnation.

B. That alleged severance damages were not included in the condemnation award with respect to the Hauppauge property.

C. That the claimed replacement property in 1975 in the amount of \$280,010.00 was not made within two years after the close of the first taxable year (i.e., 1971) in which any part of the gain was realized, in accordance with section 1033(a)(3)(B) of the Internal Revenue Code.

D. That petitioner realized a capital gain (with respect to the condemnation awards received in 1971 and 1973), less expenses and the replacement property purchased in 1973, of \$110,000.00.

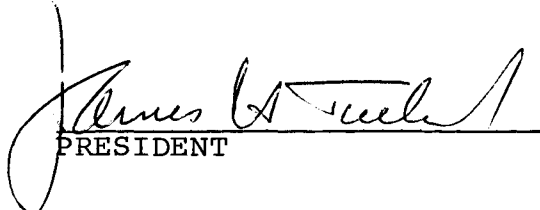
E. That the Income Tax Bureau is directed to recompute the capital gain in accordance with the stipulation that the cost basis of the Hauppauge property was \$47,403.32.

F. That the petition of Fred Colin is granted to the extent indicated in Conclusions of Law "D" and "E" herein, but is in all other respects denied.

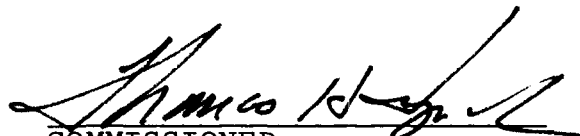
DATED: Albany, New York

February 8, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER