

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Harold D. Haslett

:

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
& UBT under Article 22 & 23 of the Tax Law for :
the Year 1972 _____

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Harold D. Haslett, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harold D. Haslett
Rt. 2, Box 536, Darling Rd.
Greene, NY 13778

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
5th day of June, 1981.

Annice A. Hayelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Harold D. Haslett :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
& UBT under Article 22 & 23 of the Tax Law for :
the Year 1972

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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Robert Rothenberg 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 Rothenberg
87 Main St.
Sidney, NY 13838

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
5th day of June, 1981.

Carrie A. Haglund

J. Vredenburg

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

June 5, 1981

Harold D. Haslett
Rt. 2, Box 536, Darling Rd.
Greene, NY 13778

Dear Mr. Haslett:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Robert Rothenberg
87 Main St.
Sidney, NY 13838
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD D. HASLETT	:	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 1972.	:	

Petitioner, Harold D. Haslett, Rt. 2, Box 536, Darling Road, Greene, New York 13778, 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 1972 (File No. 15841).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, 44 Hawley Street, Binghamton, New York, on December 7, 1979 at 10:45 A.M. Petitioner, Harold D. Haslett, appeared with Robert Rothenberg, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUES

I. Whether the sale of petitioner's farm qualified for the installment method of reporting as prescribed in section 453 of the Internal Revenue Code.

II. Whether the gain on the sale of said farm is subject to unincorporated business tax.

III. Whether petitioner is entitled to increase the cost basis of his farm property by \$8,100.00 for capital improvements.

FINDINGS OF FACT

1. Petitioner, Harold D. Haslett, timely filed a New York State Income Tax Resident Return for 1972. On May 14, 1973, petitioner filed an amended New York State Income Tax Resident Return for 1972. He did not file an Unincorporated Business Tax Return for said year.

2. A consent extending the period of limitation was executed in December, 1975 in accordance with section 683(c)(2) of the Tax Law, to April 15, 1977.

3. On April 12, 1976, the Audit Division issued a Notice of Deficiency against petitioner for 1972, asserting personal income and unincorporated business taxes of \$4,257.75, plus penalties of \$806.32 and interest of \$955.35, for a total of \$6,019.42. The deficiency was issued on the grounds that the sale of petitioner's farm did not qualify as an installment sale, the gain was subject to unincorporated business tax and other adjustments not herein at issue.

4. At a pre-hearing conference, the following adjustments were agreed to by petitioner and the Audit Division.

- (a) Net profit from the sale of farmland was decreased to \$38,906.52.
- (b) Net income from Federal Schedule C was decreased to \$1,246.00.
- (c) Penalties were cancelled.
- (d) Net loss from a farm operation was reduced to \$5,469.06.

5. Petitioner purchased the dairy farm in question in 1952. In 1968, he ceased operations and sold all the cows and dairy equipment. Inasmuch as there were no cows to feed, the tract of land that was later sold was not planted or utilized in any way, and the land was held for investment purposes only. Because of a recall of a mortgage by the Farmers Home Administration, petitioner

sold all but twelve and one-half acres, retaining only a house and a shed. The twelve and one-half acres that were retained were utilized by petitioner in a truck farm operation.

6. The farm was sold pursuant to an escrow agreement dated December 15, 1972, wherein the buyer agreed to purchase the farm for \$55,000.00 based on the following terms and conditions. Petitioner delivered to the buyer a full covenant and warranty deed, together with an abstract of Title showing the premises to be free and clear. The buyer delivered to the petitioner \$4,000.00 and three promissory notes payable to the order of petitioner as follows: One note in the amount of \$18,500.00 was due and payable on January 4, 1973; one note in the amount of \$16,000.00 was due and payable on January 4, 1974; and one promissory note in the amount of \$16,000.00 was due and payable on January 4, 1975. The buyer also agreed that at the time of the delivery of the \$4,000.00 and the three promissory notes, he would deposit the sum of \$50,500.00 with the Trust National Bank in Greene, New York (hereinafter "bank") to be held in escrow by said bank. The bank agreed it would pay the petitioner the amounts shown upon the presentation to the bank the notes on the dates stated thereon. It was further agreed that petitioner was to receive the interest earned by said money while in the escrow deposit and credited as interest on the notes.

7. Petitioner and buyer further agreed that the escrow deposit with the bank was irrevocable, the petitioner could not accelerate the time of the payments of the said notes and the bank could not release the money to the buyer.

8. At the hearing, petitioner was given thirty days to present such additional evidence that he was entitled to a greater cost basis for the farm. No evidence was forthcoming.

CONCLUSIONS OF LAW

A. That when the terms of a contract of sale were fully carried out (the transfer of deed from seller to purchaser) and the seller could have obtained the purchase price deposited in escrow without any limitation or restriction of any kind, an escrow arrangement entered into by the parties at the seller's request will not prevent the application of the doctrine of constructive receipt (Henry Bruce Bowen, 18 T.C.M. 551; James S. Price, 22 T.C.M. 818). Therefore, petitioner realized the income in the year in which it was so deposited, and the sale of petitioner's farm does not qualify for the installment method of reporting as prescribed in section 453 of the Internal Revenue Code.

B. That the land sold by petitioner in 1972 was originally used as a part of a dairy farm which petitioner ceased operating in March 1968 when he sold the cows and dairy equipment. From March 1968 until the land was sold in 1972, it was held for investment purposes only. The gain derived from the sale of the land was not a gain from sale or liquidation of an asset employed in an unincorporated business and said gain is not subject to unincorporated business tax.

C. That petitioner has failed to sustain the burden of proof within the meaning and intent of section 689(e) of the Tax Law in establishing that he was entitled to a greater cost basis of his farm property than allowed by the Audit Division.

D. That the Audit Division is directed to recompute the Notice of Deficiency issued on April 12, 1976 in accordance with Finding of Fact "4" and Conclusion of Law "B", supra.

E. That the petition of Harold D. Haslett is granted to the extent indicated in Conclusion of Law "D"; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION

James A. Tuohy
PRESIDENT

Thomas H. Syn. C.
COMMISSIONER

Francis R. Koenig
COMMISSIONER