

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Mark E. & Sharon Manson

:

:

: 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 :
Years 1974 - 1976.

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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Mark E. & Sharon Manson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mark E. & Sharon Manson
RD #1
Ft. Covington, NY 12937

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
6th day of November, 1981.

Barbara A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Mark E. & Sharon Manson

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the Years 1974 - 1976

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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 6th day of November, 1981, he served the within notice of Decision by certified mail upon Henry J. Gelles the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Henry J. Gelles
Box 590
Lake Placid, NY 12946

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
6th day of November, 1981.

Connie P. Haggard

J. Vredenburg

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

November 6, 1981

Mark E. & Sharon Manson
RD #1
Ft. Covington, NY 12937

Dear Mr. & Mrs. Manson:

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
Henry J. Gelles
Box 590
Lake Placid, NY 12946
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| MARK E. MANSON and SHARON MANSON | : | 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 Years 1974, 1975 and 1976. | : | |

Petitioners, Mark E. Manson and Sharon Manson, RD #1, Fort Covington, New York 12937, 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 years 1974, 1975 and 1976 (File No. 23519).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 207 West Genesee Street, Utica, New York, on December 11, 1980 at 2:45 P.M. Petitioners, Mark E. Manson and Sharon Manson, appeared with Henry J. Gelles, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUES

I. Whether the capital gains on the sale and the subsequent resale of a "contract for deed" and the interest on installment payments are subject to the unincorporated business tax.

II. Whether the Audit Division properly asserted penalties, pursuant to sections 685(a)(1) and (2) of the Tax Law.

FINDINGS OF FACT

1. Petitioners, Mark E. Manson and Sharon Manson, filed New York State personal income tax returns for the years 1974 through 1976. Petitioner Mark E. Manson filed a New York State Unincorporated Business Tax Return for 1974 for the dairy business he operated through May 31, 1974. He did not file unincorporated business tax returns for 1975 and 1976.

2. The Audit Division issued a Statement of Audit Changes to petitioners, in which it contended that a farm sold by petitioners had been an asset used in the business of farming; therefore, the gains derived from the sales of the farm and the interest on the installment payments are subject to unincorporated business tax. On April 4, 1978, the Audit Division issued a Notice of Deficiency against petitioners for 1974 through 1976 asserting \$527.90 in personal income and unincorporated business taxes, plus interest and penalties of \$158.22, for a total of \$686.12.

3. On May 31, 1974, petitioner Mark E. Manson ceased operation of his dairy farm business.

4. On June 15, 1974 petitioners, Mark E. Manson and Sharon Manson, entered into a "contract for deed" for the farm consisting of real property, machinery and equipment and livestock. The sale of a "contract for deed" does not immediately transfer title of said property from the petitioners to purchasers, however, upon completion of the agreement the title would then be transferred to the purchaser.

5. On May 15, 1975, the purchasers of the "contract for deed" of June 15, 1974 assigned all their rights, title and interest in and to said contract to petitioners.

6. On May 28, 1975, petitioners, Mark E. Manson and Sharon Manson, entered into another "contract for deed" with a new purchaser, wherein the petitioners received income from said contract.

7. Petitioners argued that the income received from the sale of the two "contracts for deed" was investment income and, therefore, is not subject to the unincorporated business tax.

8. Petitioners further argued the method of computing the installment and the resulting gain on the repossession is incorrect under the Internal Revenue Code. The petitioners presented no evidence to support this contention.

9. Petitioners were advised by their accountant that petitioner Mark E. Manson was not subject to unincorporated business tax after termination of his business. Therefore, the petitioners did not file unincorporated business tax returns for 1975 and 1976.

CONCLUSIONS OF LAW

A. That the income received by petitioners, Mark E. Manson and Sharon Manson, during the years at issue from the sales of the contracts for deed constituted income from the disposition of property which was employed in petitioner Mark E. Manson's unincorporated business (Kruse v. Comm., 29 TC 463, Graves Brothers Co. v. Comm., 17 TC 1499) and, as such, is subject to New York State unincorporated business tax within the meaning and intent of section 705(a) of the Tax Law and 20 NYCRR 205.1.

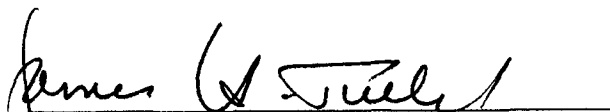
B. That the petitioners acted with reasonable cause in not filing unincorporated business tax returns for 1975 and 1976 and that no part of the deficiency is due to negligence or intentional disregard. Accordingly, the penalties asserted pursuant to sections 685(a)(1) and 685(a)(2) are cancelled.

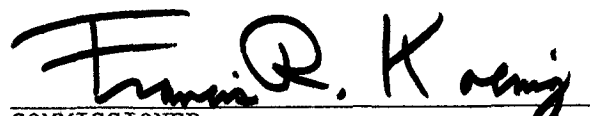
C. That the petition of Mark E. Manson and Sharon Manson is granted to the extent indicated in Conclusion of Law "B", supra, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

NOV 06 1981


PRESIDENT


COMMISSIONER


COMMISSIONER