

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

November 6, 1981

Ira Miller, Jerome H. & Katherine Miller,  
Leon Miller & Harold Sherman  
84-14 118th St.  
Kew Gardens, NY 11415

Dear Mr. Miller:

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:

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  
Morris A. Kaplan  
6 Red Deer La.  
Huntington, NY 11743  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petitions	:	
of	:	
IRA MILLER,	:	
JEROME H. and KATHERINE MILLER,	:	DECISION
LEON MILLER and HAROLD SHERMAN	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Tax under	:	
Article 22 of the Tax Law for the Year	:	
1970.	:	

---

Petitioners, Ira Miller, 70 Wensley Drive, University Gardens, Great Neck, New York 11020; Jerome H. and Katherine Miller, 50 Merivale road, University Gardens, Great Neck, New York 11020; Leon Miller, 84-14 118th Street, Kew Gardens, Queens, New York 11415; and Harold Sherman, 10 Thixton Drive, Hewlett Harbor, New York 11557, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1970 (File Nos. 14217, 14218, 14219 and 14220).

A formal hearing was held before Frank Romano, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1978 at 1:35 P.M. Petitioners appeared by Morris A. Kaplan, Esq. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the property in issue was partnership property or the property of the individual petitioners.

II. Whether purchase of replacement property by a partner on his own behalf, using his share of the proceeds from an involuntary conversion constitutes a replacement by the partnership.

III. Whether the gain realized by M.S.G. Co. must be included in the income of the petitioners, Ira Miller, Jerome and Katherine Miller, Leon Miller and Harold Sherman.

#### FINDINGS OF FACT

1. Ira Miller, Leon Miller, Jerome Miller, Harold Sherman, Louise Goldsmith, Russell Goldsmith and Lionel Goldberg entered into an agreement for the formation of a partnership entitled "M.S.G. Co." for the purpose of owning certain land used for a riding school and stables and leasing it to a corporation.

2. The partnership, M.S.G. Co., filed United States Partnership and New York State Partnership income tax returns for the years 1966, 1967, 1968, 1969 and 1970.

3. The property in question was taken in condemnation on August 28, 1969.

4. On its 1970 United States Partnership and 1970 New York State Partnership income tax returns, the partnership reported the receipt on January 23, 1970 of \$347,600.00 from the condemnation by State of New York (Department of Education) of certain land and buildings located in Nassau County, State of New York. The returns stated "Each partner will make his own election concerning replacement as provided by Internal Revenue Code Section 1033." \*

---

\* According to the Partial Agreement between Ira Miller, Leon Miller, Jerome Miller, Harold Sherman, Louise Goldsmith and Russell Goldsmith, "the State will pay to claimant and claimant will accept from the State the sum of \$260,700.00 which sum is 75 percent of \$347,600.00, the amount determined by the Trustees of the State University of New York to be the total value of the property so appropriated...". On January 21, 1970, the State of New York awarded the aforementioned petitioners the sum of \$265,740.20 as partial payment for land acquired at Department of Education, State University College at Westbury, Proposal No. 7, Map No. 6.

5. On December 15, 1965, Ira Miller, et. al., a partnership, conveyed certain property located in the town of Oyster Bay, Nassau County to Ira I. Miller, Jerome H. Miller, Leon Miller and Harold M. Sherman, as joint tenants with rights of survivorship and not as tenants in common, by a deed recorded on December 20, 1965 in the Nassau County Clerk's Office in Liber 7459 of Deeds at page 551. Said deed was executed for the partnership by Ira Miller. On December 23, 1965, Ira Miller, et. al., a partnership, conveyed the same property to the same grantees, as joint tenants with rights of survivorship and not as tenants in common by a deed recorded December 28, 1965 in the Nassau County Clerk's Office at Liber 7461 of Deeds at page 666. Said deed was executed for the partnership by Leon Miller.

6. On May 18, 1967, Ira I. Miller, Leon Miller, Jerome H. Miller and Harold M. Sherman, as joint tenants with rights of survivorship, conveyed the same property to Ira Miller, Leon Miller, Jerome Miller, Harold Sherman, Louise Goldsmith and Russell Goldsmith, co-partners d/b/a M.S.G. Co. by a deed recorded on May 23, 1967 in the Nassau County Clerk's Office at Liber 7671 of Deeds at page 22. On May 19, 1967, Ira I. Miller, Jerome H. Miller, Leon Miller, Harold M. Sherman, Louise Goldsmith and Russell Goldsmith, co-partners d/b/a M.S.G. Co. conveyed the same premises to Ira Miller, Jerome H. Miller, Leon Miller and Harold M. Sherman, as joint tenants with the right of survivorship, recorded in the Nassau County Clerk's Office on May 25, 1967 in Liber 7672 of Deeds at page 41. The aforementioned property was designated as Section 17 Block A, Lot #2597 and right of way over parts of lots #2537, 2949, 2963 and 2948 on the Land Map of Nassau County.

7. On May 18, 1966, Theresa Santoro entered into a contract to sell to Russell L. Goldsmith certain real property located in the Town of Oyster Bay,

Nassau County for \$85,000.00 designated as Section 17 Block A, Lot #2948 and right of way over part of lot #2949. This contract of sale was assigned to Ira Miller, Leon Miller, Jerome Miller and Harold Sherman. On June 29, 1966, Ira Miller, Leon Miller, Jerome Miller and Harold Sherman conveyed the same property to Ira Miller, Leon Miller, Jerome Miller, Harold Sherman, Louise Goldsmith and Russell Goldsmith, co-partners d/b/a M.S.G. Co. by a deed recorded in the Nassau County Clerk's Office on July 1, 1966 in Liber 7537 of Deeds at page 191. The property is designated as Section 17 Lot 2948 and right of way over part of lot #2949 on the Land Map of Nassau County.

8. The award of the \$347,600.00 mentioned in Finding of Fact "4", supra, referred to the real property described in Finding of Fact "7", supra.

9. On April 12, 1974, the Audit Division issued a Statement of Audit Changes against Ira Miller for the year 1970 imposing additional personal income tax in the amount of \$1,913.71, plus interest of \$343.70, for a total of \$2,257.41. Accordingly, on April 12, 1974, the Audit Division issued a Notice of Deficiency for 1970 against petitioner, Ira Miller, in the amount of \$2,257.41. The notice of audit changes stated, in part:

"When partnership property is involuntarily converted, only the partnership, by complying with the rules of replacement, may elect to postpone tax on the gain realized by the conversion. Purchase of replacement property by a partner in his own behalf, using his share of the proceeds from the involuntary conversion does not constitute a replacement by the partnership. Therefore, your share of the gain realized by M.S.G. Company must be included in income. Your share reported by the partnership is \$22,200.00."

Ira Miller timely filed a petition for redetermination of said deficiency.

10. On April 12, 1974, the Audit Division issued a Statement of Audit Changes against petitioners, Jerome H. Miller and Katherine Miller, his wife, imposing additional income tax in the amount of \$2,009.98, plus interest of

\$360.99, for a total of \$2,370.97. The increase was for reasons similar to those in No. 9, above. Accordingly, on April 12, 1974, the Audit Division issued a Notice of Deficiency for 1970 to Jerome H. Miller and Katherine Miller, his wife, in the amount of \$2,370.97. The aforementioned petitioners timely filed a petition for redetermination of said deficiency.

11. On April 12, 1974, the Audit Division issued a Statement of Audit Changes against petitioner, Leon Miller, imposing additional income tax for 1970 in the amount of \$1,866.78, plus interest of \$335.27, for a total of \$2,202.05. Accordingly, on April 12, 1974, the Audit Division issued a Notice of Deficiency for 1970 against petitioner, Leon Miller, in the amount of \$2,202.05. The increase was for reasons similar to those in No. 9, above. Leon Miller timely filed a petition for redetermination of said deficiency.

12. On April 12, 1974, the Audit Division issued a Statement of Audit Changes against petitioner, Harold Sherman, imposing additional tax for the year 1970 in the amount of \$1,238.97, plus interest of \$222.52, for a total of \$1,461.49. Accordingly on April 12, 1974, the Audit Division issued a Notice of Deficiency for 1970 against petitioner, Harold Sherman, in the amount of \$1,461.49. The increase was for reasons similar to those in No. 9, above. Harold Sherman timely filed a petition for redetermination of said deficiency.

13. On July 27, 1971, Ira Miller, Jerome H. Miller, Leon Miller and Harold Sherman, tenants in common, each invested on his own behalf in a garden apartment site at Locust Avenue, Islip, New York.

#### CONCLUSIONS OF LAW

A. That the property in issue condemned by the State of New York was owned by the petitioners as partners.

B. That section 703(b) of the Internal Revenue Code provides in substance, that "Any election affecting the computation of taxable income derived from a partnership shall be made by the partnership...".

C. That since the partnership property was involuntarily exchanged, only the partnership could elect to postpone the tax on the gain realized.

D. That the purchase of replacement property by one or more of the partners on his own behalf, using his share of the proceeds from the involuntary exchange, does not constitute replacement by the partnership.

E. That the share of the gain received by Ira Miller, Leon Miller, Jerome H. Miller and Harold Sherman from M.S.G. Co. in 1970 is includible in taxable income of the aforementioned partners.

F. That the petitions of Ira Miller, Jerome H. and Katherine Miller, Leon Miller and Harold Sherman are hereby denied and the notices of deficiency issued April 12, 1974, are sustained.

DATED: Albany, New York

NOV 06 1981

STATE TAX COMMISSION

  
PRESIDENT

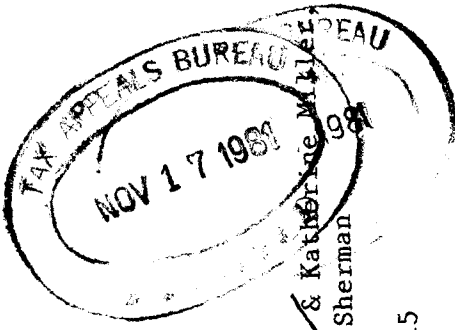
  
COMMISSIONER

  
COMMISSIONER

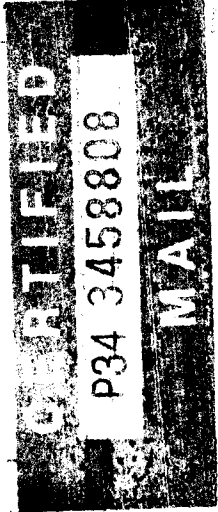
TA 26 (9-79)  
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

ATTEMPTED - NOT KNOWN

S



Miller, Jerome H & Katherine Miller  
Leon Miller & Harold Sherman  
84-14 118th St.  
Kew Gardens, NY 11415



CLAIM CHECK  
NO.

☐ HOLD

DATE

11-9-81  
1ST NOTICE

2ND NOTICE

RETURN

Detached from  
PS Form 3848-A  
Oct. 1980

BIA sent.