

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Thomas B. & Helen C. Murphy :

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 1971. :

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 9th day of January, 1981, he served the within notice of Corrected Decision by certified mail upon Thomas B. & Helen C. Murphy, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas B. & Helen C. Murphy
505 Cook Rd.
Hamlin, NY 14464

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
9th day of January, 1981.

Cornie Q. Hagelund

J. Vredenburg

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 9th day of January, 1981, he served the within notice of Corrected Decision by certified mail upon Thomas J. Young 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. Thomas J. Young
Heath & Young
66 Village Square, P.O. Box 238
Holley, NY 14470

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
9th day of January, 1981.

Cornie A. Hagelund

J. Vredenburg

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

January 9, 1981

Thomas B. & Helen C. Murphy
505 Cook Rd.
Hamlin, NY 14464

Dear Mr. & Mrs. Murphy:

Please take notice of the Corrected 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
Thomas J. Young
Heath & Young
66 Village Square, P.O. Box 238
Holley, NY 14470
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THOMAS B. MURPHY and HELEN C. MURPHY	:	CORRECTED 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 1971.	:	

Petitioners, Thomas B. Murphy and Helen C. Murphy, 505 Cook Road, Hamlin, New York 14464, 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 1971 (File No. 14185).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on February 15, 1978 at 1:15 P.M. Petitioners appeared by Thomas J. Young, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

- I. Whether the receipt on the sale of material excavated from petitioner's farmland was subject to unincorporated business tax.
- II. Whether petitioners properly computed their New York taxable income on their New York State combined return and reports of Federal audit changes.
- III. Whether petitioners were given proper credit for tax paid on their 1971 return.

FINDINGS OF FACT

1. On November 4, 1974, pursuant to an audit, the Audit Division issued a Statement of Audit Changes to petitioners. This was done on the grounds

that the sale of gravel was considered the sale of business-connected property, subject to both personal income and unincorporated business tax. Accordingly, on December 22, 1975, a Notice of Deficiency was issued to Thomas B. and Helen C. Murphy for \$7,671.24, plus interest of \$1,696.49, for a total of \$9,367.73.

2. On January 21, 1975, petitioners executed a consent extending the period of limitation for assessment of personal income and unincorporated business taxes for 1971 to April 15, 1976; the consent was validated by the Income Tax Bureau on January 29, 1975.

3. Petitioners, Thomas B. Murphy and Helen C. Murphy, timely filed a New York State Combined Income Tax Return for 1971. Petitioner Thomas B. Murphy also filed a 1971 New York State Unincorporated Business Tax Return (Form IT-202) for his fruit and brokerage business. Petitioner, Helen C. Murphy, was not involved in the businesses operated by her husband. On August 13, 1974, the Income Tax Bureau received a "Notice of Change in Taxable Income" from Thomas B. Murphy individually, pursuant to a Federal adjustment of income "from gravel extraction agreement;" additional personal income tax and interest was paid by him. Petitioner Helen C. Murphy also filed a "Notice of Change in Taxable Income" and paid additional personal income tax and interest on an identical Federal adjustment.

4. On August 17, 1971, petitioners, Thomas B. Murphy and Helen C. Murphy, contracted with the Cold Spring Construction Co., Inc. of Akron, New York, for the excavation of material from their jointly-owned acreage. The company purchased all materials which it removed from the ground at one dollar (\$1.00) per cubic yard, plus sales tax. Petitioners received \$107,200.00 for said material in 1971. The contract limited excavation to material required for a state parkway. The property was then to be regraded with stockpiled top soil which was reserved so that the farmland would be usable.

5. Information submitted with petitioners' petition shows that the 4.93 acre area of excavation involved in this matter, was located next to a former gravel pit.

6. The disagreement between the Internal Revenue Service and petitioners rested on whether the sale of the fill was of a capital asset (as reported by petitioners), or whether the sale represented royalties from a lease.

7. Petitioners, Thomas B. Murphy and Helen C. Murphy, paid \$4,057.26 and \$2,725.74 in tax respectively, with their 1971 return. On their IT-115 they also paid \$2,850.76 and \$2,876.78, for a total of \$5,727.54. Total New York State tax paid by petitioners was \$12,510.54. The Income Tax Bureau only credited petitioners with tax payments of \$11,589.76.

CONCLUSIONS OF LAW

A. That section 705(a) of the Tax Law provides that the unincorporated business gross income of an unincorporated business means "the sum of the items of income and gain of the business... includible in gross income for the taxable year for Federal income tax purposes, including income and gain from any property employed in the business..."; that the sale of fill was connected with petitioner Thomas B. Murphy's unincorporated business, in accordance with the meaning and intent of section 705(a) of the Tax Law.

B. That petitioners have properly reported and paid their personal income tax for 1971 within the meaning and intent of section 611(b)(2) of the Tax Law. Accordingly, the personal income tax portion of the Notice of Deficiency issued December 22, 1975 is cancelled.

C. That the issue involving proper credit for taxes paid on petitioners' 1971 return is rendered moot by Conclusion of Law "B" (supra).

D. That since petitioner, Helen C. Murphy, was not involved with the operation of an unincorporated business, the Audit Division is directed to

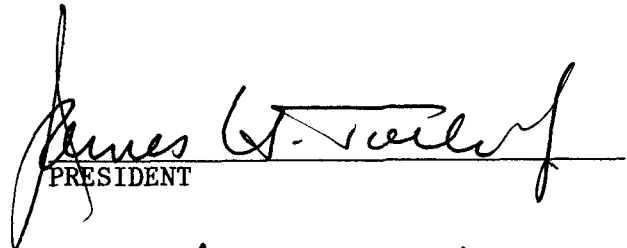
remove her name from the Notice of Deficiency issued December 22, 1975.

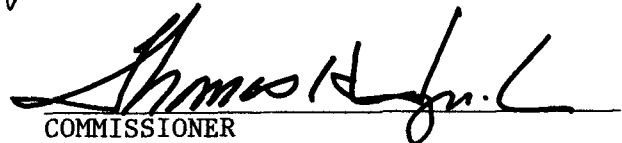
E. That the petition of Thomas B. Murphy and Helen C. Murphy is granted to the extent of Conclusions of Law "B" and "D" and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

JAN 09 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER