

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of Eugene Walter, Jr. :
and Laura E. Walter : AFFIDAVIT OF MAILING
:
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1973. :

State of New York
County of Albany

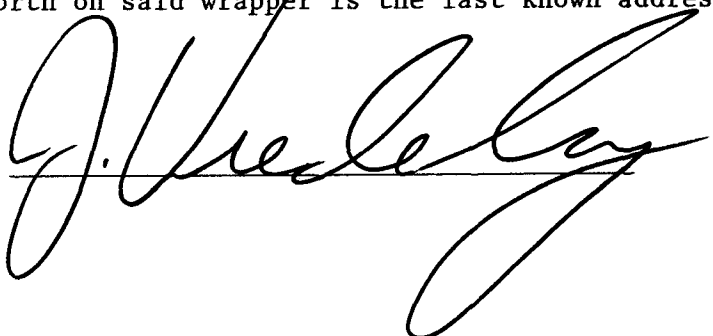
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Estate of Eugene Walter, Jr., and Laura E. Walter the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Eugene Walter, Jr.
and Laura E. Walter
854 Mago Vista Rd.
Arnold, MD 21012

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 October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Estate of Eugene Walter, Jr.	:	
and Laura E. Walter	:	AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision	:	
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1973.	:	

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 October, 1982, he served the within notice of Decision by certified mail upon Stephen Walter the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stephen Walter
2094 Pear Hill Court
Crofton, MD 21114

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 October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

October 6, 1982

Estate of Eugene Walter, Jr.
and Laura E. Walter
854 Mago Vista Rd.
Arnold, MD 21012

Dear Mrs. Walter:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Stephen Walter
2094 Pear Hill Court
Crofton, MD 21114
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ESTATE OF EUGENE WALTER, JR.	:	DECISION
and LAURA E. WALTER	:	
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1973.	:	

Petitioners, the Estate of Eugene Walter, Jr. and Laura E. Walter, 854 Mago Vista Road, Arnold, Maryland 21012, 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. 22514).

A formal hearing was held before David Evans, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 20, 1979 at 2:45 P.M. Petitioners appeared by Stephen Walter, the son of Eugene Walter, Jr. and Laura E. Walter. The Audit Division appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioners failed to report on their 1973 income tax return income received as the result of a gain on the condemnation of real property.

II. Whether petitioners failed to report on their 1973 income tax return interest income received as the result of the condemnation of real property.

III. Whether petitioners failed to file a New York State income tax return for the year 1973.

FINDINGS OF FACT

1. During the year 1973, Eugene Walter, Jr. and his wife, Laura E. Walter, resided at 8 St. George Court, Melville, New York.

2. Said Eugene Walter, Jr. died on September 23, 1973.

3. Said Laura E. Walter was duly appointed as the Executrix of his estate.

4. Said Laura E. Walter did not, either individually or as Executrix of the estate of Eugene Walter, Jr., file a New York State income tax return for the year 1973.

5. On May 22, 1978, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$8,294.97 plus interest for the year 1973. The Notice of Deficiency was based on a Statement of Audit Changes issued against the petitioners on March 4, 1977 which held that the principal and interest payments petitioners received from the condemnation of real property during 1973 were subject to the New York State income tax.

6. On November 19, 1959, Eugene Walter, Jr., had acquired title to the premises at 167 Fort Green Place, Brooklyn, New York, subject to a mortgage of \$55,500, held by Figge & Hutwelker Co. That there was no consideration paid for the execution and delivery of said deed.

7. At the time of the execution and delivery of the said deed, the said premises at 167 Fort Green Place, Brooklyn, New York, was the place of business of the wholesale meat firm of Eugene Walter, Incorporated of which Eugene Walter, Jr. and his wife, said Laura E. Walter, were the sole officers.

8. In 1968, the said premises at 167 Fort Green Place, Brooklyn, New York were the subject of a condemnation proceeding as a part of the Atlantic Terminal Urban Renewal Stage III.

9. As a part of said condemnation proceeding, on or about February 20, 1973, said Eugene Walter, Jr. received payment of an award of \$71,000.00, plus interest of \$1,225.47, for a total of \$72,225.47.

10. Out of the proceeds of said condemnation award, the sum of \$34,375.03 was paid to John T. Wiederhold to satisfy the balance due on a mortgage on the said premises at 167 Fort Green Place, Brooklyn, New York, and the sum of \$3,009.00 was paid for legal fees and disbursements to Romano & Schenker, Esqs. of 277 Broadway, New York, New York.

11. Although the record indicates that the property was used in a trade or business, no information was submitted regarding depreciation, book value or apportionment of any basis between land and buildings.

12. Petitioners have not shown that any of the proceeds of the condemnation award were used to acquire replacement property.

CONCLUSIONS OF LAW

A. That petitioners have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show a cost basis or book value of property taken as a result of the condemnation proceedings. Accordingly, petitioners are subject to tax on a long term capital gain of \$67,991.00 computed as follows: \$71,000.00 less expenses of sale \$3,009.00. Petitioners are entitled to capital gains treatment on the long term capital gain of \$67,991.00.

B. That petitioners are also subject to tax on interest income of \$1,225.47.

C. That the Audit Division is directed to modify the Notice of Deficiency in accordance with Conclusion of Law "A" and, except as so modified, the petition is denied and the Notice of Deficiency is sustained, together with such interest as lawfully due.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER