

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of Estate of Isaac Genack	: : :	: : :
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 1971.	: : : :	: : : :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 May, 1983, he served the within notice of Decision by certified mail upon Estate of Isaac Genack, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Isaac Genack
c/o Schneur Z. Genack, Executor
30 W. 47th St.
New York, NY 10036

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 May, 1983.

David Parchuck

William A. Huganir

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 Isaac Genack :
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 :
1971. :

State of New York
County of Albany

David Parchuck, 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 May, 1983, he served the within notice of Decision by certified mail upon Samuel M. Eisenstat the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel M. Eisenstat
Eisenstat & Gottesman, P.C.
30 Rockefeller Plaza
New York, NY 10020

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 May, 1983.

David Parchuck

Bernice A. Haggard

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 6, 1983

Estate of Isaac Genack
c/o Schneur Z. Genack, Executor
30 W. 47th St.
New York, NY 10036

Dear Mr. Genack:

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
Samuel M. Eisenstat
Eisenstat & Gottesman, P.C.
30 Rockefeller Plaza
New York, NY 10020
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ESTATE OF ISAAC GENACK
for Redetermination of a Deficiency or for
Refund of Personal Income Tax under Article
22 of the Tax Law for the Year 1971.

DECISION

Petitioner, the Estate of Isaac Genack, c/o Schneur Z. Genack, Executor, 30 West 47th Street, New York, New York 10036, 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 1971 (File No. 12584).

A formal hearing was commenced before Archibald Robertson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 29, 1978 at 1:15 P.M. and continued sine die. Petitioner appeared by Eisenstat & Gottesman, P.C. (Samuel M. Eisenstat, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

By letter dated January 14, 1980, petitioner waived further formal hearing and consented to submission of the petition to the State Tax Commission on the file as presently constituted.

ISSUE

Whether petitioner, a member partner in East Fishkill Associates, derived gain from partnership property appropriated by the State pursuant to the laws of eminent domain.

FINDINGS OF FACT

1. On May 6, 1966, a joint venture agreement was executed by Isaac Genack (now deceased, whose Estate is petitioner herein), Rosa Genack, Azriel Genack, Samuel Eisenstat, Lazar Matz, Mannie A. Shapiro, Bernard Gold and Arthur Michaelson. The joint venture was conducted under the name and style of East Fishkill Associates. According to the agreement, Isaac Genack had contributed 30 percent of the capital investment of the joint venture.

2. In 1966, East Fishkill Associates acquired certain real property, comprising approximately 26.499 acres in the town of East Fishkill, Dutchess County, for a consideration of \$180,000.00, plus brokerage fees in the sum of \$20,000.00. On October 28, 1970, approximately 13.902 acres of said property were appropriated by the State pursuant to section 30 of the Highway Law. The State's offer to the joint venturers for the property was \$213,000.00, and a partial payment of \$159,750.00, constituting seventy-five percent of the total offer, plus interest thereon of \$5,617.88, was made by the State in 1971.

3. (a) On March 31, 1975, the Income Tax Bureau issued a Statement of Audit Changes against Rosa Genack, the Estate of Isaac Genack and Samuel M. Eisenstat, individually and as co-partners d/b/u the firm name and style of East Fishkill Associates, asserting unincorporated business taxes due in the amount of \$2,414.56, plus interest of \$428.90, for a total of \$2,843.46. The Notice of Deficiency issued under the same date stated, in pertinent part:

"The interest and gain on involuntary conversion of property held by East Fishkill Associates is subject to the Unincorporated Business Tax as the property was held for business purposes."

(b) On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against the Estate of Isaac Genack, asserting tax due in the amount

of \$408.81, plus interest of \$72.62, for a total sum of \$481.43. The Statement of Audit Changes accompanying said Notice stated, in pertinent part:

"Information available indicates that the decedent was a member in East Fishkill Associates and that for the year 1971 the distributive share of interest and gain on the involuntary conversion of property was \$1,685.36 and \$16,652.54, respectively."

4. The Notice of Deficiency issued against East Fishkill Associates apportioned the cost basis of the real property in accordance with the ratio 13.902/34 (number of acres appropriated / total number of acres). By memorandum dated October 26, 1976, the Audit Division acknowledged that said apportionment should be on a total of 26.499 acres, rather than 34 acres.

5. On April 28, 1971, the joint venturers filed in the Court of Claims a claim against New York State for a greater amount of compensation for the taking. Judgment was entered October 1, 1975, upon a decision of the Court of Claims which awarded the claimants damages in the amount of \$278,125.00 with interest from October 28, 1970. Said decision stated, in part:

"The specific purpose for the purchase [of the East Fishkill property] was to develop subject for commercial uses... The evidence at trial establishes that claimant [Mannie A. Shapiro]¹ was in the business of, among other things, purchasing lands in and around I.B.M. complexes throughout the United States. He testified at trial that he had been attracted to subject because of its proximity to the I.B.M. complex in East Fishkill. Such properties were then developed for commercial use to take advantage of the needs of the tremendous work forces employed by I.B.M. at its plants."

6. Both the claimants and the State appealed from the aforementioned decision. The Appellate Division modified the judgment by increasing the damages to \$293,450.00, with appropriate interest. Shapiro v. New York, 61 A.D.2d 852 (3d Dept. 1978). The Court computed the award as follows:

¹ Mannie A. Shapiro, the named claimant, was one of the joint venturers. See Finding of Fact "1", supra.

(a) With regard to 9.5 acres, which were rocky and rugged terrain, the Court accepted the figure set by the claimant's appraiser, namely \$325.00 per acre, as reasonable in light of the evidence. The Court stated that the value of the rugged land remained the same before and after the appropriation; therefore, no consequential damages were awarded with respect thereto.

(b) The Appellate Division computed the per acre value of the remaining 17 acres, at the time of purchase by the claimants, as \$11,580.00. (\$200,000.00 less the value of the rugged land, above, divided by 17.) It accepted the 10% per year increment as found by the Court of Claims, which increment yielded a 1970 per acre value of \$17,320.00.

(i) The Court awarded direct damages for the 13.9 acres appropriated by the State in the amount of \$240,750.00 (\$17,320.00 x 13.9).

(ii) With regard to the last 3.1 acres, the Court awarded damages of \$52,700.00. The Court of Claims had found that the after value of said acreage was the same as that of the rugged acreage since it had been capable of commercial development but after taking became landlocked. The higher court thus calculated the loss as \$17,320.00 per acre less the after value of \$325.00 per acre.

CONCLUSIONS OF LAW

A. That during 1971, the joint venture East Fishkill Associates did not recognize any gain upon the State's payment to it of appropriation proceeds (Matter of East Fishkill Associates, signed by the State Tax Commission this date).

B. That during 1971, the only income petitioner received upon the State's payment of appropriation proceeds was its share of the interest accrued thereon in the sum of \$5,617.88. Therefore, Petitioner owes additional personal income tax on its proportionate share of said interest.

C. That the petition of the Estate of Isaac Genack is granted to the extent indicated in Conclusion of Law "A" and the Notice of Deficiency issued

on March 31, 1975 is modified accordingly; and that, except as so modified, the deficiency is in all other respects sustained.


DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Estate of Isaac Genack	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1971.	:	

State of New York
County of Albany

David Parchuck, 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 31st day of May, 1983, he served the within notice of Decision by certified mail upon Estate of Isaac Genack, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Isaac Genack
c/o Samuel M. Eisenstat
129 East 61st Street
New York, NY 10021

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
31st day of May, 1983.

David Parchuck

Connie A. Hapke

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 Isaac Genack :
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 :
1971. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 31st day of May 1983, he served the within notice of Decision by certified mail upon Samuel M. Eisenstat the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel M. Eisenstat
129 East 61st Street
New York, NY 10021

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
31st day of May, 1983.

David Parchuck

Conne R. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Detached from
PS Form 3849-A
Oct. 1980

DATE

1ST NOTICE

2ND NOTICE

RETURN

CLAIM CHECK
NO.

☐ HOLD

Estate of Isaac Genack
c/o Schneur Z. Genack, Executor
30 W. 47th St.
New York, NY 10036

Moved
New
Fernside
213 9/19/83

CERTIFIED

P 481 207 723

MAIL

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Estate of Isaac Genack	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1971.	:	

State of New York
County of Albany

David Parchuck, 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 31st day of May, 1983, he served the within notice of Decision by certified mail upon Estate of Isaac Genack, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of Isaac Genack
c/o Samuel M. Eisenstat
129 East 61st Street
New York, NY 10021

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
31st day of May, 1983.

David Parchuck

Annice P. Hagelund

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 Isaac Genack	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Personal Income	:	
Tax under Article 22 of the Tax Law for the Year	:	
1971.	:	

State of New York
County of Albany

David Parchuck, 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 31st day of May 1983, he served the within notice of Decision by certified mail upon Samuel M. Eisenstat the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel M. Eisenstat
129 East 61st Street
New York, NY 10021

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
31st day of May, 1983.

David Parchuck

William A. Haglund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

~~May 6, 1983~~

Reopened May 31, 1983 and

Estate of Isaac Genack
c/o Schneur Z. Genack, Executor
30 W. 47th St.
New York, NY 10036

Dear Mr. Genack:

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
Samuel M. Eisenstat
Eisenstat & Gottesman, P.C.
30 Rockefeller Plaza
New York, NY 10020
Taxing Bureau's Representative

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

INDEX

1ST FLOOR

2110 NOTICE

1257110A

{ } _ { } _ { } _ { }

CONFIDENTIAL

Estate of Isaac Genack
c/o Schneur Z. Genack, Executor
30 W. 47th St.
New York, NY 10036

A graphic of a hand pointing to the text "RETURNED TO SENDER". The hand is stylized, with the index finger pointing towards the text. The text is written in a bold, sans-serif font, arranged in three lines: "RETURNED", "TO", and "SENDER". The entire graphic is enclosed in a rectangular border.

P 431 207 723

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

May 6, 1983

*Forwarded
May 31, 1983*

Estate of Isaac Genack
c/o Schneur Z. Genack, Executor
30 W. 47th St.
New York, NY 10036

Dear Mr. Genack:

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
Samuel M. Eisenstat
Eisenstat & Gottesman, P.C.
30 Rockefeller Plaza
New York, NY 10020
Taxing Bureau's Representative

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

[Handwritten signature]

RECEIVED
NEW YORK
JUN 10 1979

Samuel M. Eisenstat
Eisenstat & Gottesman, P.C.
30 Rockefeller Plaza
New York, NY 10020

P 481 207 724

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

Samuel M. Eisenstat
Eisenstat & Gottesman, P.C.
30 Rockefeller Plaza
New York, NY 10020

CERTIFIED

P 481 207 724

MAIL