

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of		
Rosa 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 Rosa Genack, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rosa Genack  
67-30 Burns St.  
Forest Hills, NY 11375

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

James C. 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

Rosa Genack  
67-30 Burns St.  
Forest Hills, NY 11375

Dear Ms. 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
ROSA GENACK	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article	:	
22 of the Tax Law for the Year 1971.	:	

---

Petitioner, Rosa Genack, 67-30 Burns Street, Forest Hills, New York 11375, 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. 12583).

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 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), Rosa Genack (petitioner herein), 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, petitioner 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 Rosa Genack, asserting personal income taxes in the amount of \$488.74, plus interest of \$86.81, for a total of \$575.55. The Statement of Audit Changes accompanying said Notice stated, in pertinent part:

"Information available indicates that you were a member partner in East Fishkill Associates and that for the year 1971 your 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]<sup>1</sup> 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:

(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.

---

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

(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 Rosa Genack received upon the State's payment of appropriation proceeds was her share of interest accrued thereon in the sum of \$5,617.88. Therefore, petitioner owes personal income tax on her proportionate share of said interest.

C. That the petition of Rosa 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

MAY 06 1983

STATE TAX COMMISSION

Roderich W. Alen  
PRESIDENT

Francis R. Koenig  
COMMISSIONER

Marie J. Jurek  
COMMISSIONER