

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
William B. Goetschius :  
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 :  
Years 1972, 1973, 1974 & 1975. :  
\_\_\_\_\_

AFFIDAVIT OF MAILING

State of New York  
County of Albany

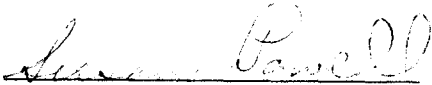
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 28th day of September, 1983, she served the within notice of Decision by certified mail upon William B. Goetschius, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William B. Goetschius  
2246 Ridge Road  
Westminster, MD 21157

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  
28th day of September, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

## STATE TAX COMMISSION

# AFFIDAVIT OF MAILING

State of New York  
County of Albany

Alexander Gurevitch  
157 N. Middletown Rd.  
Pearl River, NY 10965

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.

Annex 1

**AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174**

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

September 28, 1983

William B. Goetschius  
2246 Ridge Road  
Westminster, MD 21157

Dear Mr. Goetschius:

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 & 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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Alexander Gurevitch  
157 N. Middletown Rd.  
Pearl River, NY 10965  
Taxing Bureau's Representative

## STATE TAX COMMISSION

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 25, 1981 at 9:15 A.M. Petitioner appeared by Alexander Gurevitch, Esq. The Audit division appeared by Ralph J. Vecchio (Barry M. Bresler, Esq., of counsel).

## ISSUES

I. Whether the petition of William Goetschius is sufficiently broad to be considered the petition of Charlotte Goetschius.

II. Whether the income which Mr. Goetschius derived from gains attributable to the installment sale of real property, and the interest therefrom, constituted income subject to personal income tax and unincorporated business tax.

III. Whether penalties were properly asserted.

FINDINGS OF FACT

1. Petitioner, William B. Goetschius, and his wife, Charlotte M. Goetschius, filed a New York State Combined Income Tax Resident Return for 1972. On this return they reported the gain on an installment sale of 44.34 acres of land in 1972. Petitioner did not file an unincorporated business tax return for 1972.

2. Mr. and Mrs. Goetschius did not file New York State personal income tax returns or unincorporated business tax returns for the years 1973 and 1974.

3. Petitioner, William B. Goetschius, and his wife, Charlotte M. Goetschius, filed a New York State Combined Income Tax Nonresident Return for 1975. On this return they reported the gain received on a 1972 installment sale<sup>1</sup>. Petitioner did not file an unincorporated business tax return for 1975.

4. In 1972, William B. Goetschius and his wife, Charlotte M. Goetschius sold two parcels of land located in New York State on an installment basis. One parcel consisted of 44.34 acres, the other of 12 acres.

5. On November 28, 1977, the Audit Division issued a Notice of Deficiency accompanied by an explanatory Statement of Audit changes which proposed deficiencies of personal income tax of \$3,535.30 and unincorporated business tax of \$6,514.18 for the years 1972 through and including 1975. In addition, penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law in the amount of \$3,540.27 and interest of \$2,691.26 were asserted. To the extent relevant herein, the Notice of Deficiency was issued to Mr. Goetschius on the ground that interest income and gain derived from the installment sale of assets connected with a business were subject to unincorporated business tax and personal income tax.

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<sup>1</sup> The 1975 return did not further identify this sale.

6. On November 28, 1977 the Audit Division issued a Notice of Deficiency accompanied by an explanatory Statement of Audit Changes to Charlotte M. Goetschius asserting personal income tax due in the amount of \$255.29, for the years 1972 through and including 1974, penalties, pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law, in the amount of \$93.12, and interest of \$68.12 for a total due of \$416.53.

7. On February 24, 1978 a petition on behalf of William B. Goetschius was filed with the Tax Appeals Bureau of the State Tax Commission which requested a redetermination or revision of the deficiency or determination made under date of November 28, 1977 in the amount of tax of \$10,049.48 and penalty and/or interest of \$6,231.53. These amounts are identical to the amounts asserted against William Goetschius. The only document filed with the petition which mentioned Charlotte Goetschius was the attached power of attorney form. A separate petition on behalf of Mrs. Goetschius was not filed.

8. The 44.34 acre parcel of land conveyed in 1972 was acquired by Mr. Goetschius in segments from 1937 to 1951. Portions of the land were acquired by purchase and other portions were acquired by inheritance. Prior to 1969 one-third of the land was used to grow sweet corn. The remaining two-thirds of this parcel was woodland or swamp which was unsuitable for farming. From 1969 until the date of the sale in 1972 the land was not farmed because a rezoning of the land resulted in an increased tax assessment and rendered the farming operation prohibitively expensive.

9. The twelve acre parcel conveyed in 1972 included the Goetschius' home and a barn. The parcel was farmed as a partnership until 1952. In 1952 the fruit trees located on the farm were destroyed and the farming operation was discontinued. In 1958, farming resumed on the land. In order to augment his

income Mr. Goetschius started a retail roadside stand on a segment of this parcel. Mr. Goetschius sold fruits and vegetables at the roadside stand until 1970 when the roadside stand was discontinued. Mr. Goetschius purchased most of the vegetables sold at this roadside stand. In 1971 and 1972 Mr. Goetschius maintained fruit trees and sold the fruit yielded from the trees.

10. In November, 1972, Mr. Goetschius began moving farm equipment and personal effects to Maryland in order to take up residence in Maryland in 1973. Mr. and Mrs. Goetschius began residing in Maryland in January, 1973.

11. Mr. and Mrs. Goetschius were advised by their accountant that unincorporated business tax would not be imposed on the income or gain arising from the installment sale of the land on the assumption that the land was a personal asset. Mr. and Mrs. Goetschius were also advised by their accountant that they would not incur personal income tax liability on the interest on the installment payments on the grounds that they sold a personal asset and that Mr. and Mrs. Goetschius moved from the State of New York.

#### CONCLUSIONS OF LAW

A. That a proceeding before the State Tax Commission is commenced by the timely filing of a proper petition (Tax Law §689(a); 20 NYCRR 601.3). Since Charlotte Goetschius did not file a separate petition and since the petition of William Goetschius does not include a challenge to the deficiency asserted against Charlotte Goetschius, the State Tax Commission renders no determination with respect to the deficiency asserted against Charlotte Goetschius.

B. That the parcel of land consisting of 44.34 acres had not been used for farming for three years prior to its sale and its character changed from a business asset to a personal asset. Accordingly the gain from the sale of this parcel was not unincorporated business gross income within the meaning and

intent of section 705(a) of the Tax Law (Matter of Evelyn Dunning, as Executrix of the Estate of Edward M. Dunning, Deceased, State Tax Commission, January 29, 1982; Matter of Louis J. Coene [Deceased] and Sophia I. Coene, State Tax Commission, September 19, 1980).

C. That the gain from the installment sale of the 44.34 acre parcel constituted income from New York sources within the meaning and intent of section 632(b)(1)(A) of the Tax Law and 20 NYCRR 131.3. Accordingly, such payments are subject to New York State personal income tax.

D. That section 632(b)(2) of the Tax Law provides that:

"Income from intangible personal property, including annuities, dividends, interest and gains from the disposition of intangible personal property, shall constitute income derived from New York sources only to the extent that such income is from property employed in a business, trade, profession or occupation carried on in this State."

E. That the interest income received on the mortgage note arising from the sale of the 44.34 acre parcel of property was not income "...from property employed in a business, trade, profession, or occupation carried on in this state." (Tax Law §632(b)(2)). Accordingly, this interest income is not subject to New York State personal income tax (Matter of Epstein v. State Tax Comm., 89 A.D.2d 256). Similarly, the interest income received on the mortgage note arising from the sale of the twelve acre parcel is not subject to New York State personal income tax (Id.).

F. That although the roadside stand was closed in 1970, petitioner continued to use the twelve acre parcel to harvest and sell fruit. Thus, the character of the land remained a business asset. Accordingly, the gain and interest income received on the installment sale of the twelve acre parcel of land constituted unincorporated business gross income arising from the liquidation of a business within the meaning of section 705(a) of the Tax Law.



G. That the failure of Mr. Goetschius to file a New York State unincorporated business tax return and pay unincorporated business tax was due to reasonable cause and not willful neglect. Accordingly, the penalties imposed for failure to file an unincorporated business tax return and pay the tax due thereon are cancelled. The remaining penalties imposed for failure to file New York State personal income tax returns and pay the tax due on the returns required to be filed were properly asserted.


H. That the petition of William B. Goetschius is granted to the extent of Conclusions of Law "B", "E" and "G"; that the Audit Division is directed to modify the Notice of Deficiency accordingly; and that, except as modified, the petition of William B. Goetschius is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 28 1983

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER