

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul E. & Catherine Perkins :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income & :
Unincorporated Business Tax under Articles 22 & 23 :
of the Tax Law for the Year 1980. :
:

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1985, he served the within notice of Decision by certified mail upon Paul E. & Catherine Perkins, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul E. & Catherine Perkins
P.O. Box 356
Seneca Falls, NY 13148

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1985.

David Parchuck

Carrie A. Haglund

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul E. & Catherine Perkins :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Personal Income :
& Unincorporated Business Tax under Articles 22 & :
23 of the Tax Law for the Year 1980. :
:

AFFIDAVIT OF MAILING

State of New York :

ss.:

County of Albany :

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1985, he served the within notice of Decision by certified mail upon Alfred J. Coggins, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alfred J. Coggins
21 Center Street
Waterloo, NY 13165

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1985.

David Parchuck

Samuel A. Hayes
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 18, 1985

Paul E. & Catherine Perkins
P.O. Box 356
Seneca Falls, NY 13148

Dear Mr. & Mrs. Perkins:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Alfred J. Coggins
21 Center Street
Waterloo, NY 13165
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
PAUL E. PERKINS AND CATHERINE PERKINS	:	DECISION
for Redetermination of Deficiencies or for	:	
Refunds of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of the	:	
Tax Law for the Year 1980.	:	

Petitioners, Paul E. Perkins and Catherine Perkins, P.O. Box 356, Seneca Falls, New York 13148, filed petitions for redetermination of deficiencies or for refunds of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1980 (File Nos. 37321 and 37418).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Room 437, Syracuse, New York, on June 13, 1984 at 10:45 A.M., with all briefs to be submitted by July 10, 1984. Petitioners appeared by Alfred J. Coggins, P.A. and Patrick F. Kreckel, P.A. The Audit Division appeared by John P. Dugan, Esq. (Kevin A. Cahill, Esq., of counsel).

ISSUE

Whether petitioners properly computed the gain on the installment sale of real property, said real property consisting of both business property and petitioners' personal residence, by attributing \$80,000.00 of the first year's payment of \$90,828.00 to the personal residence and the balance, \$10,828.00, to the business property.

FINDINGS OF FACT

1. Petitioners herein, Paul E. Perkins and Catherine Perkins, timely filed separate New York State income tax resident returns for 1980. Petitioner Paul E. Perkins also filed an unincorporated business tax return for 1980 reporting thereon the net profit generating from his ownership and operation of the Silver Creek Golf Course.

2. On March 4, 1982, the Audit Division issued two notices of deficiency to petitioners, Paul E. Perkins and Catherine Perkins, for the year 1980. The first Notice of Deficiency, received and marked into evidence as exhibit "B", proposed additional personal income tax due of \$2,424.55, plus interest of \$212.04, for a total allegedly due of \$2,636.59. The second Notice of Deficiency, received and marked into evidence as exhibit "C", proposed additional unincorporated business tax due of \$2,639.84, plus interest of \$230.86, for a total allegedly due of \$2,870.70.

3. At the hearing held herein the Audit Division conceded that the unincorporated business tax alleged due for 1980 was to be reduced by \$144.00. Said concession was made since the Audit Division's computation of additional unincorporated business tax due did not afford petitioners credit for the tax paid with the 1980 unincorporated business tax return.

4. Both of the notices of deficiency, as described in Finding of Fact "2", supra, were based on the results of a field audit of petitioners' personal and business books and records. Numerous adjustments were proposed by the Audit Division; however, petitioners contest only those adjustments which stem from the Audit Division's reallocation, in a pro rata manner, of installment payments received in 1980 between business property and petitioners' personal residence.

5. On or about April 9, 1980, petitioner Paul E. Perkins sold the Silver Creek Golf Course for \$350,000.00. Included in the sale was: land with an eighteen hole golf course; an equipment building; machinery and equipment; inventory of golf and bar purchases; and a large wooden building which housed a pro shop, a bar known as the Dungeon Lounge, and located above the Dungeon Lounge, petitioners' personal residence. Petitioners elected to report the gain on the sale of the Silver Creek Golf Course on the installment sale method.

6. In the year at issue, petitioners received \$90,828.00 from the purchasers of the Silver Creek Golf Course. At issue herein is the appropriate portion of the \$90,828.00 to be attributed to petitioners' personal residence. It is undisputed that out of the total selling price of \$350,000.00, \$80,000.00 represented the fair market value of the Perkins' personal residence. Petitioners seek to attribute \$80,000.00 of the 1980 proceeds to the personal residence and to thereafter exclude from 1980 income the entire gain realized on the sale of the personal residence pursuant to section 121 of the Internal Revenue Code¹. It is the Audit Division's position that only 22.85 percent (\$80,000.00 placed over \$350,000.00) of the 1980 proceeds can be attributed to the personal residence and excluded from income pursuant to Internal Revenue Code section 121. Under the Audit Division's method, petitioners would attribute 22.85 percent of each year's installment payment to the personal residence and exclude that amount from income. By attributing \$80,000.00 of the first year's proceeds to the personal residence, petitioners excluded from income the gain

¹ Internal Revenue Code §121 provides for the one-time exclusion of the gain from the sale of a principal residence by an individual who has attained age 55.

realized on said personal residence entirely in 1980, while the Audit Division would have petitioners exclude the gain on the personal residence over the entire duration of the installment sale.

7. The contract for the sale of the Silver Creek Golf Course was not submitted into evidence; however, it is undisputed that there is only one contract of sale which included all the real and personal property specified in Finding of Fact "5", supra. Said contract did not provide for a breakdown of the individual purchase price of the various items sold nor was there any provision in said contract detailing the apportionment of payments to the items sold. Furthermore, the record is devoid of any evidence which would support that the parties to the sale of the Silver Creek Golf Course had an agreement, understanding or even an intention to allocate payments first to petitioners' personal residence and next to the business items transferred.

CONCLUSIONS OF LAW

A. That sections 722 and 689(e) of the Tax Law place the burden of proof on petitioners except in three specifically enumerated instances, none of which are at issue herein. Petitioners have failed to submit any evidence which would justify allocating installment payments received in 1980 first to petitioners' personal residence and next to the business assets sold. Accordingly, the Audit Division's allocation of the installment payments received in 1980 based on a percentage determined by dividing the undisputed value of each group of assets sold by the total sales price is proper. See: Johnson v. Comm., 49 T.C. 324; Bar-Deb Corporation v. United States, 75-1 USTC ¶ 9453; Monaghan v. Comm., 40 T.C. 680; Rev. Rul. 55-79, 1955-1 C.B. 370; Rev. Rul. 57-434, 1957-2 C.B. 300; Rev. Rul. 68-13, 1968-1 C.B. 195.

B. That pursuant to Finding of Fact "3", supra, the deficiency in unincorporated business tax for 1980 is reduced by \$144.00, from \$2,639.84 to \$2,495.84.

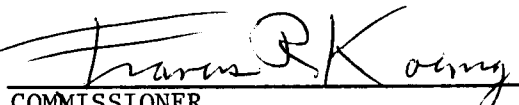
C. That the petitions of Paul E. Perkins and Catherine Parkins are granted to the extent indicated in Conclusion of Law "B", supra; and that, except as so granted, the petitions are in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1985


PRESIDENT


COMMISSIONER


COMMISSIONER