

## BUREAU OF LAW

## MEMORANDUM

*Unincorporated Business Taxes*  
*Determination 1A-2*  
*Carra, James*  
*and*  
*Cogan, Lea*

TO: Commissioners Murphy & Macduff

FROM: Solomon Ries, Hearing Officer

SUBJECT: LEA COGAN & JAMES CARRA  
individually and as co-partners d/b/u the firm name  
and style of LEA COGAN AND JAMES CARRA

Application for Revision or Refund of Unincorporated  
Business Taxes under Article 16-A of the Tax Law for  
the Year 1959.

Petition for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Taxes under  
Article 23 of the Tax Law for the year 1960.

File #867

A hearing with reference to the above matters was held  
before me at 80 Centre Street, New York, N.Y. on May 10, 1965. The  
appearances and the evidence produced were as shown in the  
stenographic minutes and the exhibits submitted herewith.

The issue involved herein is whether the activities of  
the subject partnership in the acquisition, development and sale of  
real property primarily for sale to customers in the ordinary course  
of business constitutes the carrying on of an unincorporated business  
or whether the partnership is exempt from unincorporated business by  
reason of the purchase and sale of property for its own account or  
is engaged solely in the holding, leasing or managing of real property.

The taxpayers did not appear at the hearing but were  
represented by an accountant who testified in connection therewith.  
The taxpayer Lea Cogan is a licensed real estate broker. The taxpayer  
James Carra was formerly in the construction business. Both Lea Cogan  
and James Carra are the sole stockholders and officers of James Carra  
Realty Corporation, a domestic corporation engaged in the construction  
of buildings. In December, 1957, Cogan and Carra entered into a  
partnership agreement (Tax Commission's Exhibit C) wherein it is  
stated that "The purpose of the partnership will be to engage in the  
erection and development of buildings for rental and investment  
purposes."

On their partnership return for the year 1959 the taxpayers  
indicated capital gain in the sale of a house at Babylon Turnpike,  
Roosevelt, N.Y. and building at Babylon Turnpike, Roosevelt, N.Y.  
The house was acquired on December 27, 1957 and sold on December 15,  
1959. The cost was stated to be \$14,466.39 and the sale price  
\$17,000.00. The other building was acquired in 1958 at a cost of  
\$33,044.14 and sold on June 15, 1959 for \$47,500.00. On the 1960

TO: Commissioners Murphy, Palestin & Macduff

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RE: LEA COGAN & JAMES CAHRA

partnership return the taxpayers indicated that they had acquired a building in Glen Cove in December, 1957 which they sold on January 28, 1960. The cost was reported at \$115,092.65 and the sales price as \$136,320.00. The taxpayers filed an IT-115 for the year 1959 on July 23, 1962, based upon Federal audit which held that the gain on the sale of the properties heretofore mentioned were held to be ordinary income. They also filed an IT-115 for the year 1960 which indicated that on Federal audit it was held that the gain was deemed to be subject to normal income tax instead of capital gain tax as reported.

It appears that the office of the partnership was conducted at the same office as that of the corporation. It appears that the corporation constructed most of the buildings which the taxpayer partnership rented for a short period of time and then re-sold (Minutes of Hearing, pp 12 & 13). It also appears that the partnership erected the Glen Cove building (Minutes of Hearing, p. 16).

I am of the opinion that the taxpayers have failed to establish that they were engaged primarily in the rental of real property but that the corporation built the buildings, transferred title to the partnership and that the partnership subsequently intended to and did sell said buildings to customers in the regular course of business as a dealer. I am, therefore of the opinion that the activities of the taxpayers during the years in issue in the acquisition, development and sale of real property as a dealer constituted the carrying on of an unincorporated business subject to unincorporated business tax in accordance with Sections 386 and 707 of the Tax Law.

For the reasons stated above, I recommend that the determination of the Tax Commission in the above matter be substantially in the form submitted herewith.

APR 27 1966

SOLOMON SIES

Hearing Officer

/s/ Martin Schapiro  
Approved

/s/ Saul Heckelman  
Approved

SS:hm (November 14, 1966)

Encls.



STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION

OF

LEA COGAN and JAMES CARRA

Individually and as co-partners  
d/b/a the firm name and style of

LEA COGAN AND JAMES CARRA

FOR REVISION OR REFUND OF  
UNINCORPORATED BUSINESS TAXES  
UNDER ARTICLE 16-A OF THE TAX LAW  
FOR THE YEAR 1959.  
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Lea Cogan and James Carra individually and as co-partners doing business under the firm name and style of Lea Cogan and James Carra having filed an application for revision or refund of unincorporated business taxes under Article 16A of the Tax Law for the year 1959 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. on the 10th day of May, 1963 before Solomon Nies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers were represented by Joseph H. Fisher & Co. by Joseph S. Canale, C.P.A., and the matter having been duly examined and considered, the State Tax Commission hereby finds:

(1) That the taxpayers filed a partnership return (Form IT 204) for the year 1959 in which they reported income from rents and royalties in the sum of \$10,230.43, and also reported net capital gains in the sum of \$16,987.47; that the taxpayers did not file any unincorporated business tax return for said year 1959; that on March 21, 1963, the Department of Taxation & Finance made an additional assessment against the taxpayers for the year 1959

(Assessment No. AB 048560) holding the activities of the partnership to constitute the carrying on of an unincorporated business subject to unincorporated business tax and further adjusted normal income to conform with the audit of the taxpayers' Federal partnership return and imposed unincorporated business tax due in the sum of \$637.42.

(2) That the taxpayer Lea Cogan is a licensed real estate broker; that the taxpayer James Carra was formerly in the construction business; that both Lea Cogan and James Carra are the sole stockholders and officers of James Carra Realty Corporation, a domestic corporation engaged in the construction of buildings; that in December, 1957 the taxpayers Lea Cogan and James Carra entered into a partnership agreement wherein it is stated that: "The purpose of the partnership will be to engage in the creation and development of buildings for rental and investment purposes"; that the partnership of Lea Cogan and James Carra maintained an office for the transaction of its business at 95 West Sunrise Highway, Merrick, New York; that the James Carra Realty Corporation conducted its office at the same place of business as that of the partnership.

(3) That on their partnership return for the year 1959 the taxpayers indicated capital gain in the sale of a house located at Babylon Turnpike, Roosevelt, New York, and the sale of a commercial building also located at Babylon Turnpike, Roosevelt, New York; that the house was acquired on December 27, 1957 and sold on September 15, 1959; that the cost of said house was stated to be \$14,444.39, and the sale price \$17,300; that the commercial building was acquired in 1958 at a cost of \$33,004.14 and sold on June 15, 1959 for \$47,500; that the taxpayers filed an IT 115 for the year 1959 on July 23, 1960 based on Federal audit which held that the gains on sale of properties above mentioned constituted ordinary income.

(4) That the taxpayers have failed to establish that they were engaged solely in the holding, leasing or managing of real property or that they were solely engaged in the purchase and sale of real property for their own account; that the taxpayers were engaged primarily in the acquisition, development and sale of real property as dealers to customers in the ordinary course of their business which activity was conducted solely within the State of New York.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

(A) That the activities of the taxpayers during the year 1959 in the acquisition, development and sale of real property as dealers to customers in the regular course of business constitutes the carrying on of an unincorporated business in accordance with the provisions of Section 386 Article 16-A of the Tax Law.

(B) That accordingly the assessment for the year 1959 (Assessment No. AB 048560) is correct; that same does not include any tax or other charge which is not lawfully due or owing and that the taxpayers' application for revision or refund filed with respect thereto be and the same is hereby denied.

DATED: Albany, New York on the 21st day of November, 1966.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**President**

/s/

JAMES R. MACDUFF

**Commissioner**

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION :  
OF :  
LEA COGAN and JAMES CARRA :  
individually and as co-partners :  
d/b/u the firm name and style of :  
LEA COGAN AND JAMES CARRA :  
FOR REVISION OR REFUND OF :  
UNINCORPORATED BUSINESS TAXES :  
UNDER ARTICLE 16-A OF THE TAX LAW :  
FOR THE YEAR 1959.  
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Lea Cogan and James Carra individually and as co-partners doing **business under the firm** name and style of Lea Cogan and James Carra having filed an application for revision or refund of unincorporated business taxes under Article 16A of the Tax Law for the year 1959 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N.Y. on the 10th day of May, 1965 before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayers were represented by Joseph S. Fisher & Co. by Joseph S. Casale, C.P.A., and the matter having been duly examined and considered, the State Tax Commission hereby finds:

(1) That the taxpayers filed a partnership return (Form IT 204) for the year 1959 in which they reported income from rents and royalties in the sum of \$10,238.43, and also reported net capital gains in the sum of \$16,989.47; that the taxpayers did not file any unincorporated business tax return for said year 1959; that on March 21, 1963, the Department of Taxation & Finance made an additional assessment against the taxpayers for the year 1959

(Assessment No. AB 048560) holding the activities of the partnership to constitute the carrying on of an unincorporated business subject to unincorporated business tax and further adjusted normal income to conform with the audit of the taxpayers' Federal partnership return and imposed unincorporated business tax due in the sum of \$637.22.

(2) That the taxpayer Lea Cogan is a licensed real estate broker; that the taxpayer James Carra was formerly in the construction business; that both Lea Cogan and James Carra are the sole stockholders and officers of James Carra Realty Corporation, a domestic corporation engaged in the construction of buildings; that in December, 1957 the taxpayers Lea Cogan and James Carra entered into a partnership agreement wherein it is stated that: "The purpose of the partnership will be to engage in the erection and development of buildings for rental and investment purposes"; that the partnership of Lea Cogan and James Carra maintained an office for the transaction of its business at 95 West Sunrise Highway, Merrick, New York; that the James Carra Realty Corporation conducted its office at the same place of business as that of the partnership.

(3) That on their partnership return for the year 1959 the taxpayers indicated capital gain in the sale of a house located at Babylon Turnpike, Roosevelt, New York, and the sale of a commercial building also located at Babylon Turnpike, Roosevelt, New York; that the house was acquired on December 27, 1957 and sold on September 15, 1959; that the cost of said house was stated to be \$14,466.39, and the sale price \$17,000; that the commercial building was acquired in 1958 at a cost of \$33,004.14 and sold on June 15, 1959 for \$47,500; that the taxpayers filed an IT 115 for the year 1959 on July 23, 1962 based on Federal audit which held that the gains on sale of properties above mentioned constituted ordinary income.



(4) That the taxpayers have failed to establish that they were engaged solely in the holding, leasing or managing of real property or that they were solely engaged in the purchase and sale of real property for their own account; that the taxpayers were engaged primarily in the acquisition, development and sale of real property as dealers to customers in the ordinary course of their business which activity was conducted solely within the State of New York.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DETERMINES:

(A) That the activities of the taxpayers during the year 1959 in the acquisition, development and sale of real property as dealers to customers in the regular course of business constitutes the carrying on of an unincorporated business in accordance with the provisions of Section 386 Article 16-A of the Tax Law.

(B) That accordingly the assessment for the year 1959 (Assessment No. AB 048560) is correct; that same does not include any tax or other charge which is not lawfully due or owing and that the taxpayers' application for revision or refund filed with respect thereto be and the same is hereby denied.

DATED: Albany, New York on the 21st day of November, 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

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President

/s/

JAMES R. MACDUFF

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Commissioner