

BUREAU OF LAW

MEMORANDUM

Unincorp. Bus. Inc.
Determinations A. Z.
Northern Blvd. & Main
Realty Co.

TO: Commissioners Murphy, Palestin and Macduff

FROM: M. Schapiro, Hearing Officer

SUBJECT: Northern Boulevard & Main Realty Co.
Application for Refund of Unincorporated Business Taxes
Under Article 16-A of the Tax Law for the Years 1952
Through 1959.

Petition for Refund of Unincorporated Business Taxes
Under Article 23 of the Tax Law for the Year 1960.

A hearing with reference to the above matters was held before me in Albany, New York on June 1, 1966. Only the taxpayer's attorney appeared since what was involved was an issue of law rather than one of facts. The appearance of the attorney and arguments were as shown in the stenographic minutes and exhibits submitted herewith. The record discloses that the taxpayer partnership filed unincorporated business tax returns for the years 1952 through 1963 and paid the tax as computed on the return. The returns bear notations that the taxpayer's business is either real estate, real estate holding or real estate operating, and that the taxpayer's income is from rents.

On August 24, 1964 for the first time the taxpayer filed applications or claims for refunds of unincorporated business taxes paid for all of the years contending that the taxpayer was engaged solely in the holding, leasing or management of real property and thus exempt from unincorporated business taxes in accordance with the provisions of section 386 of Article 16-A or section 703 subdivision (e) of Article 23 of the Tax Law. Refunds were granted for the years 1961, 1962 and 1963. Refunds were denied since the applications or claims for refund were not filed timely within the two or three-year limitation period set forth in section 374 of Article 16 or section 687 of Article 22 of the Tax Law. The taxpayer, however, contends that the provisions of section 373 subdivision 3 of Article 16 or the provisions of 697 subdivision (d) of Article 22 of the Tax Law are applicable, urging that there are no questions of fact or law involved. I am of the opinion that the exemption for taxpayers solely engaged in the holding, leasing or management of real property presents questions of law and fact to be resolved by the Commission and that the mere fact that such questions were resolved in favor of the taxpayer in the years 1961, 1962

and 1963 does not mean that such questions were eliminated in prior years. Accordingly I have denied the taxpayer's applications or petitions for refund for the years 1952 through 1960 where no timely filing had been made.

/s/

MARTIN SCHAPIRO

Hearing Officer

August 30, 1966

MS:cp

Encs.

(September 14, 1966)

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION OF

NORTHERN BOULEVARD &

MAIN REALTY CO.

FOR REFUND OF UNINCORPORATED BUSINESS
TAXES UNDER ARTICLE 16-A OF THE TAX LAW
FOR THE YEARS 1952 THROUGH 1959

Northern Boulevard & Main Realty Co., the taxpayer partnership herein, having filed applications for refund of unincorporated business taxes under Article 16-A of the Tax Law for the years 1952 through 1959, and a hearing having been held in connection therewith at the office of the State Tax Commission, Department of Taxation and Finance Building, State Campus, Albany, New York on the first day of June 1966 before Martin Schapiro, Hearing Officer, of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Charles F. Rubano, Esq., testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed unincorporated business tax partnership returns for the years 1952 through 1959 and for years subsequent thereto; that unincorporated business taxes were computed by the taxpayer and payment of taxes as computed made together with the filing of the returns; that the returns for the years 1952 through 1955 bear notations that the taxpayer's business is real estate; that the returns for the years 1956 through 1958 bear a notation that the taxpayer's business is real estate holding; that the return for the year 1959 bears a notation that the business is

real estate operating; that each of the returns list income as being derived from rents and royalties and the kind of property from which such income is derived is listed as a brick building.

(2) On August 24, 1964 the taxpayer filed applications for refund of the taxes paid for the years 1952 through 1959 together with claims for refund for years subsequent to those in issue; that the applications for refund of tax for the years in issue were requested on the ground that the taxpayer was engaged solely in the holding, leasing or management of real property and was thus exempt from unincorporated business taxes in accordance with the provisions of section 386 of the Tax Law; that refunds were granted for the years 1961, 1962 and 1963; that refunds for the years in question were denied on the ground that the taxpayer's applications for refunds were not timely filed.

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

DETERMINES:

(A) That the applications for refund with respect to the years 1952 through 1959 were filed more than two years from the time of the filing of the returns and were not timely filed in accordance with the requirements of section 374 of the Tax Law.

(B) That questions of fact or law are involved, namely, whether the taxpayer was engaged solely in the holding, leasing or management of real property, and that the taxpayer is, therefore, not entitled to relief under the provisions of section 373 subdivision 3 of the Tax Law.

(C) Accordingly, the taxpayer's applications for refund of unincorporated business taxes paid for the years 1952 through 1959 are hereby denied.

And it is so Ordered.

DATED: Albany, New York this 16th day of September, 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

COMMISSIONER

/s/

JAMES R. MACDUFF

COMMISSIONER

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION OF

NORTHERN BOULEVARD &

MAIN REALTY CO.

FOR REFUND OF UNINCORPORATED BUSINESS
TAXES UNDER ARTICLE 23 OF THE TAX LAW
FOR THE YEAR 1960

Northern Boulevard & Main Realty Co., the taxpayer partnership herein, having filed a petition for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1960, and a hearing having been held in connection therewith at the office of the State Tax Commission, Department of Taxation and Finance Building, State Campus, Albany, New York on the first day of June 1966 before Martin Schapiro, Hearing Officer, of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Charles F. Rubano, Esq., testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed an unincorporated business tax partnership return for the year 1960 and years subsequent thereto; that unincorporated business taxes were computed by the taxpayer and payment of taxes as computed made together with the filing of the return; that the return for the year 1960 bears a notation that the taxpayer's business is real estate operating and that the taxpayer's income is from rents.

(2) On August 24, 1964 the taxpayer filed a claim for refund of the taxes paid for the year 1960 together with claims

for refund for years subsequent to those in issue; that refunds of tax for all of such years were requested on the ground that the taxpayer was engaged solely in the holding, leasing or management of real property and was thus exempt from unincorporated business taxes in accordance with the provisions of section 703 subdivision (e) of the Tax Law; that refunds were granted for the years 1961, 1962 and 1963; that a refund for 1960, the year in question, was denied on the ground that the taxpayer's claim for refund was not timely filed.

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

DETERMINES:

(A) That the claim for refund with respect to the year 1960 was filed more than three years from the time of the filing of the return for such year, and was not timely filed in accordance with the requirements of section 687 of the Tax Law.

(B) That questions of fact and law are involved, namely, whether the taxpayer was engaged solely in the holding, leasing or management of real property, and that the taxpayer is, therefore, not entitled to relief under the provisions of section 697 subdivision (d) of the Tax Law.

(C) Accordingly, the taxpayer's petition for refund of unincorporated business taxes paid for the year 1960 is hereby denied.

And it is So Ordered.

DATED: Albany, New York this 16th day of September 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

COMMISSIONER

/s/

JAMES R. MACDUFF

COMMISSIONER