Uninemporated Business BUREAU OF LAW Pax Determinations # - Z MEMORANDUM Barpade Golf Company

TO:

Commissioners Marphy, Macduff and Conlon

See also:

FROM:

Vincent P. Holineous, Bearing Officer Sucome Park

SUBJECT: CRASS. DE . METER, C. MOLLAND METER S. WILLIAMS METER AND MANAGER MET HOWLAND CRAMD, 4/b/A BAYESSE GOLF COMMEN

> Application for revision or refund of mincorporated business tex under Article 16-A of the Tax Law for the fiscal years ended April 30, 1957, April 30, 1958 and for the period May 1, 1958 to October 29, 1960

Determinations A-Z

Oneyer, Charles G.

3 Meyer, G. Howland 3 Meyer, S. Willets 4 Grand, Margaretheyer

GRASLES S. MITER, JR. e. Dirlad Kayas B. Village Kayas MANAGEMENT PROTECT COALED

Applications for revision or refund of personal image tax for the year 1957

A hearing on the above matters was held before me at 80 Centre Street, New York, New York on May 25, 1965. The appearances and the evidence produced were as shown in the stanographic minutes and exhibits submitted herevith.

The issue raised is whether income resulting from the sale of a parcel of real property for \$3,000,000 is the income of the individuals and reportable as installment income or business income of the owners of the real property the bas bus operating the property as a golf course under a partnership.

The property, with the exception of one small parcel should \$50' by \$50' acquired in 1931, had been in the temperary family since 1887. Beyoide Golf Corporation was organized in 1931 and took title to the real property. All of the charge of the corporation were held by the fether of the temperary in trust for the temperary until the said father's death in 1956 when the trust ended and the charge became the property of each of the petitioners. In May 1952 the real property was trunctured by the corporation to the temperary as temperary was trunctured by the corporation to the temperary as temperary was disposited.

BUREAU OF LAW MEMORANDUM

ing Constant and and the color, Timeral Court Bost Market Color

FROME A CONTROL CO. Modernon: Monweller Control Section of The

1 22 g 1 2 g 1 4 1

SUBJECT:

| Continue | THE STATE OF THE SECOND SECOND STATES OF THE STATES OF THE SECOND SECOND

The second of the second secon

Arthological of the Assistant Control of the in a called a second a comment of the contract of the contract

William I. The wast wast 8 to 1. 1858

CHARLES S. SELVER, JES. S. C. C. C. A STAND WED WITH LO

THE PROPERTY OF THE PARTY OF TH - Crish wateh thadhai

AND CONTROL OF SERVICE OF THE TOTAL OF THE PROPERTY OF THE PROPERTY OF THE SERVICE OF THE SERVIC graph provided the contraction of the page of the page of the contraction of the contract The second of the second of the second

The language and the language of the language and the lan

and the second of the second o ြိမ်းကို မြင်း မြိတိန်းရ မြင်းကို မေးသို့ ကြောင်းမြိန်းကို မောက်မြို့ပါ မြို့သွား**သည်။ အို မြိမ့် သည်။** မောင်မည် မြင်းကြွေးမြောင်းသည်။ ၁၈၈ ကို မြိမ့်မြို့သည်။ မောင်မောက် အလုပ်နှည့်မြို့ပြုပြုပြုပြုပြုပြုပြုပြုပြုပြု agential and some and the suppose of the suppose of the companies of the suppose aperated his the application of the figure of the contract and the first of the contract of the contract of the

The are captive as the big cape then a large the cape of and the connect cape of the cape ද හැර වන වන්නේ මින් ද්රාර්ගන මහද මෙස්ද නිවේනම දී අතරාත්ව ලමුණ වඩා වර්ණයට ජනාලජ oetitienes. In initiari et iii the ruchi eneses tras cas tras transariore. The continue to this terrologist de reconsistent in earch, (tamperoner and The Company of th (temperary exhibit N). Steps were taken to dispose of the property (temperary inhibit Q), and efforts were made to have the fity Planning Commission returns the area to permit the construction of parton spartments and thus improve the salestillty of the tiplet.

A contract for the sale of the land for \$3,000,000 was finally signed March 2, 1956 between Margaret E. Grand, Charles 6, News, Jr., S. Willets Mayor and 6. Newtone Mayor and Senagan Bolding Corp.

In the mountime, to continue the productivity of the land the politiceners had encested on April 1, 1980 a partnership agreement forming the Investe Bell Company for the continued operation of the golf course pending sale of the property (tampayors' eshibit 6).

the pertuerably agreement recites that the pertuers each have an undivided interest in the property and that each transfer his share of the property to the company to operate a golf course. The agreement does not fulfill the requirements of a deal of real property (temperate) exhibit () and the debt of the agreement is prior to the deal of the property from the corporation to the temperate and dissolution of the corporation. The agreement was never recorded as a deal. It must be taken than that the property was never transferred to the partnership and remained the property of the individual partners. However, the situation is not inconsistent with a partnership-joint venture relationship and would be included under the board provisions of section 306 of the fex law.

Section 386 excludes from the application of the tex entities or individuals engaged in the holding, leading or managing of real property.

the operation of a galf course, but it is contended that but operation has neverly incidental to the holding of the real property. The property had been operated for many years as a golf course by a corporation, all of the stock of which was hald by the same family. The furn of experiention operating the golf course was changed in 1988. The corporation was discolved and the real property distributed to the ptockholders as joint tenants. We operation of the golf course continued uninterrupted but now their a partnership agrangement. It may be argued that the omers in 1982, due to a change in population density and may other factors, now decided to dispose of the property but such a determination would not alter the holding of the real property as a instince resture to the more holding of real property as an investment.

(to a second of the second of

Charles of the continuent of the application of the continuent of

The continent of the co

ing tagan ing the company of the engage of the engage of the company of the compa

The first energy and the second of the first of the second of the second

to change of the form of holding the property would be equally maintent with changes resulting from the father's death and examination of the trust as it would be with the desire of the syspers to hold the property only for sale.

Consideration was given by the Consispion to a sense related case in Matter of Fraction in August 1966, and the was referred beer to the Matter the Depose with a directly consolition. However, in that case the property had all been reduced from full use as a golf course at the time to tempayor had acquired it and was clearly purchased by the ers for investment purposes.

Also, in People on, yel, being y, State Tox Seminary A 3 26 by, afficies 8 y Y to yes, they not have the form to a hotel and continued to operate it. However, the operate the hotel was shown to be incidental to the helding of real property for liquidation for the benefit of helders cortificates in a trust nortgage.

Since the premises in this case had been operated by some parties in interest as a gulf course for \$1 years and a corporate form and four years as a partnership, it is my opinion that the sale of the property constituted business subject to unincorporated business but.

For the resease status above, I recommend that the section of the fax Countries in the above matter affinishment of the applications for revision be substantially form submitted heresits.

/s/ VINCENT P. MOLINEAUX

o tituri sajah igusa miguna je wiji julikipup

In the second of the control of the second of

a figure of the transfer of the land of the - ค.ศ. โดยโดยสมัย เข้าโดยสมัย หม่าเดือน คือสมุดเม

a la completa de la completa del completa del completa de la completa del la completa de la completa del la completa de la com

la la laggi à la Vacada l'illusa -

a ser i jir diyati. Taliya iyyaa ta basa karawa balista ta baa firiili ka t eguaro meder (1) e Orient, o Cioqua an diamente de quedent outra outra esta en esta en esta en esta en esta en el como de esta en en en esta en en entre entre en entre entre en entre en

នក្រុម ស្ត្រីស្រីស្រី ប្រុស្ស លោក ស្រែក្រុស នី នៃស្ត្រីក្រុស្តីក្រុស ប្រជាជាការប្រាស់ ស្រែស្រីស្រីស្រីស្រី notice of the flux to a fair and the selective states and the selection of tour number toot thereof the

and the second of the second o

The state of the s

a right spirit in the spirit

with the live in the wind part of the second

IN THE MATTER OF THE APPLICATION

OF

CHARLES G. MEYER, G. HOLLAND MEYER, S. WILLETS MEYER AND MARGAPET MEYER GRAND, d/b/a BAYSIDE GOLF COMPANY

FOR REVISION OR REFUND OF UNINCORPO- :
RATED BUSINESS TAX UNDER ARTICLE 16-A :
OF THE TAX LAW FOR THE PISCAL YEARS :
ENDED APRIL 30, 1957, APRIL 30, 1958 :
AND FOR THE PERIOD MAY 1, 1958 to
OCTOBER 29, 1958 :

The taxpayers having filed an application for revision or refund of unincorporated business tax for the fiscal years 1957, 1958 and 1958 and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, New York on the 25th day of Hay 1965 before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance and the record having been duly examined and considered.

The State Tax Commission hereby finds:

- (1) That taxpayers filed unincorporated business tax returns for the fiscal years ended April 30, 1957, April 30, 1958 and the period May 1 to October 29, 1958 on which the tax shown to be due was paid.
- (2) That on October 5, 1961 the State Tax Commission issued Assessments B983020, B983021 and B983022 for the fiscal periods indicated in paragraph 1 in the respective amounts of \$25,000, \$6,025.07 and \$57,586.02 on the ground that real property operated as a golf course and sold in installments for \$3,000.000 constituted partnership income and was subject to unincorporated business tax under Article 16-A of the Tax Law.

- parcel approximately 250° by 250° (taxpayers' exhibit E) acquired in 1931, had been in taxpayers' family since 1887. Bayside Golf Company was formed in 1931 and took title to the property and operated a public golf course. All of the shares of the corporation were held by the father of the taxpayers in trust for them, until the said father's death in 1950. At that time, the trust ended and the shares became the property of each of the patitioners.
- the corporation to the taxpayers as tenants in common (taxpayers' exhibits N and C). The corporation was dissolved in June 1952 (taxpayers' exhibit N). Steps were taken to dispose of the property (taxpayers' exhibit Q) and efforts were made to have the City Planning Commission rezone the area to permit the construction of garden apartments and thus improve the saleability of the tract.
- (5) A contract for the sale of the land by the tempeyers to Nonajan Corp. was executed in March 1956.
- (6) In the meantime the taxpayers on April 1, 1952 executed a partnership agreement, forming Bayside Golf Company, to continue operation of the golf course pending sale of the property (taxpayers' exhibit C).
- recites that the partners each have an undivided interest in the property and that each transfers his share of the property to the partnership to operate a golf course. The agreement does not fulfill the requirements of a conveyance of real property and the agreement is prior to the date of the deed of the property from the corporation to taxpayers and dissolution of the corporation.

 The agreement was never recorded as a deed.

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

DETERMINES:

- (A) That the sale of the real property was a sale of property used in the business of the taxpayers.
- (b) That income from the sale was income of the partnership.
- (C) That Assessments 5983020,5983021 and 5983022 for unincorporated business tax are correct and the denial of the application for revision is confirmed.

Dated: Albany, New York this 22nd day of September . 1967.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

PRESIDENT

COMMISSIONER

CORMISSIONER