

BUREAU OF LAW
MEMORANDUM*Unincorporated Business
Tax Determinations A-Z
Bayside Golf Company*

TO: Commissioners Murphy, MacDuff and Conlon

See also:

FROM: Vincent P. Molineaux, Hearing Officer

*Income Tax*SUBJECT: *HOWLAND*
CHARLES G. MEYER, G. HOWLAND MEYER,
S. WILLETS MEYER AND MARGARET MEYER
GRAND, d/b/a BAYSIDE GOLF COMPANY*Determinations A-Z*

- ① Meyer, Charles G.
- ② Meyer, G. Howland
- ③ Meyer, S. Willets
- ④ Grand, Margaret Meyer

Application for revision or refund of
unincorporated business tax 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, 1959

CHARLES G. MEYER, JR.
G. HOWLAND MEYER
S. WILLETS MEYER
MARGARET MEYER GRAND

Applications for revision or refund of
personal income 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
stenographic minutes and exhibits submitted herewith.

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 who had been
operating the property as a golf course under a partnership.

The property, with the exception of one small parcel about
250' by 250' acquired in 1931, had been in the taxpayers' family
since 1867. Bayside Golf Corporation was organized in 1931 and
took title to the real property. All of the shares of the
corporation were held by the father of the taxpayers in trust
for the taxpayers until the said father's death in 1952 when the
trust ended and the shares became the property of each of the
petitioners. In May 1952 the real property was transferred by
the corporation to the taxpayers as tenants in common (taxpayers'
exhibits H and O). In June 1952 the corporation was dissolved

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SUBJECT:

[illegible][illegible]

(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 salability of the tract.

A contract for the sale of the land for \$3,000,000 was finally signed March 2, 1956 between Margaret M. Grand, Charles G. Meyer, Jr., S. Willets Meyer and S. Howland Meyer and Monahan Holding Corp.

In the meantime, to continue the productivity of the land the petitioners had executed on April 1, 1952 a partnership agreement forming the Bayside Golf Company for the continued operation of the golf course pending sale of the property (taxpayers' exhibit 6).

The partnership agreement recites that the partners each have an undivided interest in the property and that each transferred his share of the property to the company to operate a golf course. The agreement does not fulfill the requirements of a deed of real property (taxpayers' exhibit 6) and the date of the agreement is prior to the deed of the property from the corporation to the taxpayers and dissolution of the corporation. The agreement was never recorded as a deed. It must be taken then 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 broad provisions of section 386 of the Tax Law.

Section 386 excludes from the application of the tax entities or individuals engaged in "the holding, leasing or managing of real property".

There can be no question but that the taxpayers were engaged in the operation of a golf course, but it is contended that such operation has merely 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 held by the same family. The form of organization operating the golf course was changed in 1952. The corporation was dissolved and the real property distributed to the stockholders as joint tenants. The operation of the golf course continued uninterrupted but now under a partnership arrangement. It may be argued that the owners in 1952, due to a change in population density and any other factors, now decided to dispose of the property but such a determination would not alter the holding of the real property as a business venture to the mere holding of real property as an investment.

(The following information was obtained from a review of the records of the Department of the Interior, Bureau of Land Management, and the Bureau of Reclamation, and is being furnished for your information.)

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

Consideration was given by the Commission to a somewhat related case in *Estate of Eyster* in August 1966, and the case was referred back to the Internal Tax Bureau with a direction for cancellation. However, in that case the property had already been removed from full use as a golf course at the time the taxpayer had acquired it and was clearly purchased by the new owners for investment purposes.

Also, in *People ex. rel. Robin v. State Tax Commission*, 9 A D 2d 47, affirmed 8 N Y 2d 928, trustees had turned the property to a hotel and continued to operate it. However, the operation of the hotel was shown to be incidental to the holding of the real property for liquidation for the benefit of holders of certificates in a trust mortgage.

Since the premises in this case had been operated by the same parties in interest as a golf course for 21 years under a corporate form and four years as a partnership, it is my opinion that the sale of the property constituted business income subject to unincorporated business tax.

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

/s/

VINCENT P. MOLINEAUX

HEARING OFFICER

June 23, 1967

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STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

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

FOR REVISION OR REFUND OF UNINCORPOR-
ATED BUSINESS TAX 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, 1958

The taxpayers having filed an application for revision or refund of unincorporated business tax for the fiscal years 1957, 1958 and 1959 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 May 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 6, 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.

(3) The property with the exception of one small 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 petitioners.

(4) In May 1952 the real property was transferred by the corporation to the taxpayers as tenants in common (taxpayers' exhibits M and O). The corporation was dissolved in June 1952 (taxpayers' exhibit M). 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 taxpayers 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).

(7) The partnership agreement (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 B983020, B983021 and B983022 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


COMMISSIONER