

MORELAND, Robert & Carrie
U. S. T. 1968

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

ROBERT C. AND CARRIE E. MORELAND, SR.,
individually and as co-partners doing
business under the name and style of
ROBERT C. & CARRIE E. MORELAND, SR.

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEAR 1956

AFFIDAVIT OF MAILING

IN THE MATTER OF THE PETITION

OF

ROBERT C. AND CARRIE E. MORELAND, SR.,
individually and as co-partners,
doing business under the name and style
of ROBERT C. & CARRIE E. MORELAND, SR.

FOR REDETERMINATION OF A DEFICIENCY AND
FOR A CLAIM OF REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 23 OF THE
TAX LAW FOR THE YEAR 1960

State of New York } ss. :
City and County of Albany

Kathleen O'Neil, being duly sworn, deposes and says:

That your deponent is over the age of eighteen and an
employee in the Office of the State Tax Commission, Department of
Taxation and Finance, Law Bureau.

That on the 22nd day of April 1968, your deponent
deposited at a post office station maintained and controlled by
the United States at Building No. 9, State Campus in the City
and County of Albany, New York, a copy of the determination
and a copy of the decision of the State Tax Commission in this
proceeding, copies of which are hereto attached, contained in a
securely closed, postpaid cover, directed to be mailed by
certified mail (certificate No. 976711) to the herein below
named taxpayer in this proceeding at the address set forth below.

Mr. Robert C. Moreland
Box 162, South Country Road
Rensselaer, New York

Sworn to before me this 22nd day
of April 1968.

/s/ Kathleen O'Neil

/s/ Phebe C. Brown

NOV 19 1944

TO THE DIRECTOR

FROM THE CHIEF OF BUREAU

RE: [Illegible text]

[Illegible text]

ALL INFORMATION

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STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

ROBERT C. AND CARRIE E. MORELAND, SR.,
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FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEAR 1956

IN THE MATTER OF THE PETITION

OF

ROBERT C. AND CARRIE E. MORELAND, SR.,
individually and as co-partners,
doing business under the name and style
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FOR REDETERMINATION OF A DEFICIENCY AND
FOR A CLAIM OF REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 23 OF THE
TAX LAW FOR THE YEAR 1960

State of New York) ss. :
City and County of Albany }

AFFIDAVIT OF MAILING

Kathleen O'Neil, being duly sworn, deposes and says:

That your deponent is over the age of eighteen and an
employee in the Office of the State Tax Commission, Department of
Taxation and Finance, Law Bureau.

That on the 22nd day of April, 1968, your deponent
deposited in a letter box exclusively maintained and controlled
by the United States Government at Building No. 9, State Campus
in the City and County of Albany, New York, a copy of the
determination and a copy of the decision of the State Tax Commission
in this proceeding, copies of which are hereto annexed, contained
in a securely closed, postpaid cover, directed to the herein below
named representative of the taxpayer in this proceeding at the
address set forth below.

Pierre G. Lundberg, Esq.
c/o Smith, Tasker, Finkelstein
and Lundberg, Esqs.
P. O. Box 389
Franklin National Bank Building
Riverhead, New York

Sworn to before me this 22nd
day of April 1968.

/s/ Phebe C. Brown

XXX /s/ Kathleen O'Neil

RECEIVED

THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

DEPARTMENT OF THE ARMY

OFFICE OF THE SECRETARY

WASHINGTON, D. C.

TO THE SECRETARY OF THE ARMY

FROM THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

RECEIVED

THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

DEPARTMENT OF THE ARMY

OFFICE OF THE SECRETARY

WASHINGTON, D. C.

TO THE SECRETARY OF THE ARMY

FROM THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

April 22, 1968

Mr. Robert C. Moreland
Box 162, South Country Road
Remsenburg, New York

Re: In the Matter of the Application of
ROBERT C. AND CARRIE E. MORELAND, SR.,
individually and as co-partners doing
business under the name and style of
ROBERT C. & CARRIE E. MORELAND, SR.
for Revision or Refund of Unincorporated
Business Taxes Under Article 16-A of the
Tax Law for the Year 1956

In the Matter of the Petition of
ROBERT C. AND CARRIE E. MORELAND, SR.,
individually and as co-partners,
doing business under the name and style
of ROBERT C. & CARRIE E. MORELAND, SR.
for Redetermination of a Deficiency and
for a Claim of Refund of Unincorporated
Business Taxes Under Article 23 of the
Tax Law for the Year 1960

Dear Mr. Moreland:

Please take notice that the State Tax Commission has made a determination, a copy of which is hereto attached, denying your application for revision or refund with respect to the assessment for the year 1956.

An application to review the determination of the Tax Commission may be made to the Supreme Court in accordance with section 375 of the Tax Law which provides in part that the application shall be made within ninety days after the mailing of the notice of such determination. The aforesaid section further provides that before commencing such a proceeding, the taxpayer must file with the Tax Commission an undertaking approved by a Justice of the Supreme Court for costs, and must deposit with the Commission the full amount of the taxes, interest and other charges, or in lieu thereof, file with the Commission an undertaking approved by a Justice of the Supreme Court for costs and for the taxes, interest and other charges.

Mr. Robert C. Moreland

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Please take further notice that the State Tax Commission has made a decision with respect to the year 1960, a copy of which is hereto attached, denying your petition for a redetermination of a deficiency and for a claim for refund.

An application to review the decision of the Tax Commission may be made to the Supreme Court in accordance with section 690 of the Tax Law which provides in part that the application shall be made within four months after notice of the decision is sent by certified or registered mail to the taxpayer. The aforesaid section further provides that unless before or at the time of making such application the taxpayer has paid the deficiency or has deposited with the Tax Commission the amount of the deficiency or in lieu thereof, has filed a bond approved by a Justice of the Supreme Court for the unpaid deficiency, interest and other amounts and for costs, the Commission may assess such deficiency. Such deficiency, if assessed, may then be collected in accordance with the provisions of the Tax Law.

Very truly yours,

EDWARD H. BEST
Counsel

MS:kon
Enc.

cc: Pierre G. Lundberg, Esq.
c/o Smith, Tasker, Finkelstein
and Lundberg, Esqs.
P. O. Box 389
Franklin National Bank Building
Riverhead, New York

BUREAU OF LAW

MEMORANDUM

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: IN THE MATTER OF THE PETITION OF ROBERT C. AND CARRIE E. MORELAND, SR. INDIVIDUALLY AND AS CO-PARTNERS d/b/u FIRM NAME AND STYLE OF ROBERT C. AND CARRIE E. MORELAND, SR. FOR A REDETERMINATION OF A DEFICIENCY AND FOR A REDETERMINATION OF A DEFICIENCY AND FOR A CLAIM OF REFUND OF UNINCORPORATED BUSINESS TAXES UNDER ARTICLE 23 OF THE TAX LAW FOR THE YEAR 1960.

IN THE MATTER OF THE APPLICATION OF ROBERT C. AND CARRIE E. MORELAND, SR. INDIVIDUALLY AND AS CO-PARTNERS d/b/u FRIM NAME AND STYLE OF ROBERT C. AND CARRIE E. MORELAND, SR. FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS INCOME TAXES FOR THE YEAR 1956.
1956 Assessment No. FA 3104-Article 16-A

A hearing was held in the above matter at the New York City Office on March 28, 1966.

The primary issue involved herein is whether the gain realized on the sale of real property owned by the taxpayers is subject to unincorporated business tax. Determinative of this issue is the question as to whether the taxpayers were exempt from the imposition of unincorporated business tax upon the ground that they were engaged solely "in the holding, leasing or managing of real property" in accordance with the provisions of Sections 386 and 703(e) of the Tax Law. The secondary issue is whether the taxpayers filed a timely claim for refund of the amount paid on the filing of their amended return for 1956.

From 1937 to 1947, the taxpayers, husband and wife, operated a poultry farm on one acre of land located at Commack, N. Y. They built chicken coops, purchased baby chicks raising them for egg production. They sold the eggs and the older hens which were no longer productive to wholesale egg and poultry dealers.

In 1947, they acquired 48.2733 acres of surrounding land together with the buildings situated thereon subject to a life estate in favor of the mother of the taxpayer Robert C. Moreland, Sr. This property was comprised of woodland and farm land upon which there were barns, a stable, chicken coops, chicken sheds or shelters, a corn crib, a pump and a family

dwelling. In 1954, the taxpayers became the absolute owners in fee of the entire 49.2733 acres of land.

In May, 1955, the taxpayers entered into a written agreement with one Fred R. Hertan for the sale of the entire 49.2733 acres of land reserving the right to remove some of the shrubbery and to remain in possession until August, 1956. The agreed purchase price was \$4,500.00 an acre. The purchasers intended to erect a development consisting of one-family homes. The purchasers made a down payment of \$22,500.00, paid taxpayers \$42,750.00 in January, 1956, at which time they received a deed to the property and executed a purchase money mortgage for the balance. The taxpayers removed and sold the dwelling for \$9,000.00 to a third party and also sold one of the chicken coops. They purchased another poultry farm in Remsenburg, N. Y. and removed there in September, 1956. They also removed some of the chicken coops. They continued to operate a poultry farm in Remsenburg, N. Y. until 1964. The taxpayers and their attorneys conceded at the hearing that the sale was consummated in 1956.

The taxpayers filed personal and unincorporated business tax returns for the year 1956 on March 12, 1956 in which they reported net profit of \$4,585.01 from operation of poultry farm and no tax due. On February 10, 1961 they filed amended personal and unincorporated business tax returns, claiming they "sold their poultry farm plus considerable woodland at Commack, N. Y. in 1955 for a total of \$221,729.85 and received \$22,500.00 as a first payment in 1955; that shortly after January 1, 1956 a further payment of \$42,229.85 was received"; that they erroneously assumed that the payment received in 1956 was included in their 1955 returns. They allocated 30% of the selling price to the poultry farm, dwelling, etc. and 70% to the "vacant unused land." The gain on the sale of the farm, etc. was reported subject to normal and unincorporated business income taxes. The gain on the sale of the woodland was reported as a capital gain and was not included in income for unincorporated business tax purposes. Both gains were reported on the installment basis. The 1960 personal and unincorporated business income tax returns were similarly allocated and reported.

On their amended unincorporated business tax return for 1956 (filed February 10, 1961) the taxpayers computed and paid unincorporated business tax in the amount of \$105.66. The taxpayers executed waivers extending the statutory limitation to issue assessments until April 15, 1965 both for 1956 and 1960. Based upon field audit, the Income Tax Bureau determined that the taxpayers were co-partners operating a poultry farm; that the installment sale was consummated in 1956; that the gain on the sale of the woodlands constituted partnership income subject to unincorporated business tax as the woodlands were a part of the land sold by the partnership. The assessment for 1956 was issued on April 2, 1965 in the amount of \$1,637.19. The taxpayers paid this assessment and on June 23, 1965 filed a claim for refund not only for \$1,637.19 but also for \$105.66 paid on February 10, 1961, the date of the filing of the

amended return. The claim for refund is being treated as an application for revision or refund with respect to the assessment for 1956. It is to be noted that the taxpayers received credit for the \$105.66 on the assessment. I am of the opinion that the above claim for refund was not timely filed within two years of the filing of amended return in accordance with Section 374 of the Tax Law.

The Statement of Audit Changes and Notice of Deficiency for the year 1960 were made on April 13, 1965. The taxpayers filed a timely petition for redetermination and on June 23, 1965 filed a claim for refund of the unincorporated business taxes paid with their return in the amount of \$524.03. The taxpayers received credit for this amount in the computation of the tax.

In People exrel, Voelkel v. Browne, 268 App. Div. 596, aff'd. 294 N. Y. 834, the relators were surviving executors of one Emil Bonner who left an estate consisting of cash, securities, 81 piéces of real property and a manufacturing business which made door closing devices. By his will he conferred on his executors the power to sell the real estate and authorized them to carry on the manufacturing business. The issue there involved was whether the depreciation on the real property excluding the property used for factory purposes, should be allowed in computing unincorporated business tax against the manufacturing business. Determinative of the issue was the question as to whether the holding, managing and leasing of real property by relators was an unincorporated business.

There was no proof that decedent integrated or connected his real estate holdings with his manufacturing business during his lifetime. Records of the business and real estate were kept separately. Separate bank accounts were maintained. It was held that relators were managing the real property as income producing property.

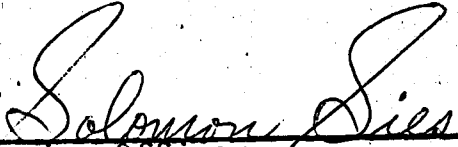
In the instant case the taxpayers used the poultry sheds or "rain shelters" on the property acquired in 1947. (Minutes of Hearing, Page 44.) They also planted wheat and endeavored to raise corn on a portion of the additional tract of land acquired. (Minutes of Hearing, Page 36.) In addition, the taxpayers on their unincorporated business tax return for 1955 claimed depreciation on barns and a pump. They deducted from their cost, depreciation previously taken on the farm buildings. I am of the opinion that the tracts of land and farm buildings located thereon acquired by taxpayers in 1947 was integrated or connected with their operations of the poultry farm on the one acre of land.

The attorneys for the taxpayers contend that the sale of the real estate is exempt from unincorporated business tax and cite the cases of People Ex Rel Rubin v. Tax Commission, 9 AD2d 47, affirmed without opinion, 8 NY2d 922; Warnecke v. State Tax Commission, 15 AD2d 320, motion for leave to appeal denied, 11 NY2d 645; Orda v. State Tax Commission, 12 NY2d 772, reversing 15 AD2d 711. In the Rubin and Warnecke cases the question involved was whether the operation of an apartment hotel with a restaurant and other facilities for the convenience of

guests constituted the holding, leasing or managing of real property exempt from unincorporated business tax. The court held that the taxpayers were primarily engaged in the operation of the real estate as an apartment hotel with the restaurant being incidentally thereto. The Orda case involved a 12-story apartment house consisting of 128 apartments of which approximately 18% of the apartments were fully furnished and rented as furnished apartments. The court held that the taxpayers were primarily engaged as owners, lessees or holders of real estate.

The taxpayers presented no evidence at the hearing to refute the determination of the Income Tax Bureau that they were co-partners. They contend that the woodlands represent vacant unused land held by them for investment purposes and that the installment gain realized thereon was subject to capital gain tax but was exempt from unincorporated business tax. I am of the opinion that such woodlands were a part of the land sold by the partnership and that the gain on the sale thereof constituted partnership income subject to unincorporated business tax.

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


Hearing Officer

February 19, 1968

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE PETITION

OF

ROBERT C. AND CARRIE E. MORELAND, SR.,
individually and as co-partners,
doing business under the name and style
of ROBERT C. & CARRIE E. MORELAND, SR.

FOR REDETERMINATION OF A DEFICIENCY AND
FOR A CLAIM OF REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 23 OF THE
TAX LAW FOR THE YEAR 1960.

The above-named taxpayers having filed a petition for redetermination of a deficiency and a claim 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 at 80 Centre Street, New York, N. Y., on the 28th day of March, 1966, at which hearing the taxpayers appeared personally and were represented by Smith, Tasker, Finkelstein & Lundberg, Esqs., by Howard M. Finkelstein and Pierre G. Lundberg, Esqs., of Counsel, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That at all of the times herinafter mentioned, the taxpayers, Robert C. and Carrie E. Moreland, Sr., were co-partners doing business under the firm name and style of Robert C. & Carrie E. Moreland, Sr., operating a poultry farm business at Commack, N. Y.; that the taxpayers owned one acre of land from 1937 to 1947, when they acquired 48.2733 additional surrounding acres of farm land subject to a life estate in favor of the mother of the taxpayer Robert C. Moreland, Sr.; that in 1954, the taxpayers became the absolute owners in fee of the entire 49.2733 acres of land; that the land acquired by the taxpayers in 1947 consisted of woodlands and farm land on which

was situated a one-family dwelling, chicken coops, barns, a stable, poultry sheds or shelters, a corn crib and a pump; that the taxpayers originally purchased baby chicks, raising them for egg production, selling the eggs and the hens, which were no longer productive, to wholesale egg and poultry dealers; that in connection with the aforementioned operations, the taxpayers used a combine tractor and manure spreader.

(2) That the taxpayers used the poultry shelters in connection with the raising of chickens (Minutes of Hearing, page 44); that the taxpayers used a portion of the farm land acquired for the planting of wheat and corn (Minutes of Hearing, page 34); that on their unincorporated business tax return for 1955 (Tax Commission's Exhibit A) the taxpayers deducted depreciation on the farm buildings situated on the property acquired by them in 1947; that the use by the taxpayers of the aforementioned property was connected and integrated with their poultry farm business.

(3) That on May 25, 1955, the taxpayers entered into a contract for the sale of the real property, and the purchaser paid \$22,500 on account; that on January 20, 1956, the taxpayers received an additional \$42,750 and a purchase money mortgage; that a deed was executed and delivered by the taxpayers to the purchaser on January 20, 1956; that the contract provided that the taxpayers reserve the right to remove the shrubbery surrounding the buildings, and further provided that the taxpayers were to have the exclusive use of the dwellings and buildings until August 15, 1956; that the taxpayers continued the operation of the poultry farm on the premises until September, 1956 when they removed and continued to operate a poultry farm at Remsenburg, N. Y. until some time in 1964; that in 1960 the purchasers paid to the taxpayers in satisfaction of the purchase money mortgage the balance due; that the taxpayers concede that the sale of the real property on the installment basis was consummated in the year 1956.

(4) That the taxpayers filed an unincorporated business tax return for the year 1960 in which they allocated 30% of the installment gain realized on the sale of the land and buildings to the sale of "poultry farm" attributable to unincorporated business tax and 70% to the sale of "vacant unused land" which they treated subject to capital gain tax only; that the taxpayers computed unincorporated business tax due in the amount of \$524.03 and paid the same; that on June 14, 1965, the taxpayers filed a claim for refund of the unincorporated business tax paid for the year 1960 upon the ground that no portion of the gain of the sale of the real property is subject to unincorporated business tax.

(5) That the taxpayers duly executed consents for the year 1960 extending the time to issue a statement of audit changes and notice of deficiency until April 15, 1965; that on April 13, 1965, the Department of Taxation and Finance issued a statement of audit changes adjusting the gain on the installment sale of farm and woodlands by the taxpayer-partnership as a result of a field audit examination; that the gain on the sale of woodlands was held to constitute a capital gain by the partnership subject to unincorporated business tax since the woodlands were part of the land or real property sold to the taxpayer-partnership; that credit was allowed for the unincorporated business tax computed and paid with the unincorporated business tax return filed jointly by the taxpayers for the year 1960; that additional unincorporated business tax was imposed in the amount of \$4,233.20 plus interest, and a notice of deficiency was issued, accordingly, in the amount of \$5,235.75.

(6) That the real property sold by the taxpayers in 1956 constituted property used in the trade or business of the taxpayer-partnership.

(7) That the real property acquired by the taxpayers was not held by them for investment purposes.

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

DECIDES:

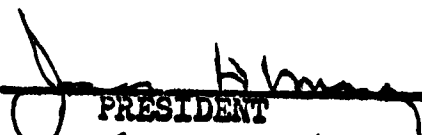


(A) That the installment gain realized by the taxpayers on the sale of the real property was not exempt from unincorporated business tax since the taxpayer-partnership was not engaged in the holding, leasing or managing of real property during the years involved hereon.

(B) That the gain on the sale of the woodlands was subject to unincorporated business tax since it was part of the land or real property sold by the taxpayer-partnership.

(C) That, accordingly, the statement of audit changes and notice of deficiency against the taxpayers for the year 1960 are correct; that the same do not include any tax or other charge which could not have been lawfully demanded; that the taxpayers' petition for redetermination of a deficiency and claim for refund for the year 1960 be and the same are hereby denied.

Dated: Albany, New York, the 22nd day of April , 1968.

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

ROBERT C. AND CARRIE E. MORELAND, SR.,
individually and as co-partners doing
business under the name and style of
ROBERT C. & CARRIE E. MORELAND, SR.

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEAR 1956.

The above-named taxpayers having filed claims for refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1956, and the same having been treated as an application for revision or refund of unincorporated business tax under Article 16-A of the Tax Law for the year 1956 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 28th day of March, 1966, at which hearing the taxpayers appeared personally and were represented by Smith, Tasker, Finkelstein & Lundberg, Esqs., by Howard M. Finkelstein and Pierre G. Lundberg, Esqs., of Counsel, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That at all of the times hereinafter mentioned, the taxpayers, Robert C. and Carrie E. Moreland, Sr., were co-partners doing business under the firm name and style of Robert C. & Carrie E. Moreland, Sr., operating a poultry farm business at Commack, N. Y.; that the taxpayers owned one acre of land from 1937 to 1947, when they acquired 48.2733 additional surrounding acres of farm land subject to a life estate in favor of the mother of the taxpayer Robert C. Moreland, Sr.; that in 1954, the taxpayers became the absolute owners in fee of the entire 49.2733 acres of land; that the land acquired by the taxpayers in 1947 consisted of woodlands and farm land on which

was situated a one-family dwelling, chicken coops, barns, a stable, poultry sheds or shelters, a corn crib and a pump; that the taxpayers originally purchased baby chicks, raising them for egg production, selling the eggs and the hens, which were no longer productive, to wholesale egg and poultry dealers; that in connection with the aforementioned operations, the taxpayers used a combine tractor and manure spreader.

(2) That the taxpayers used the poultry shelters in connection with the raising of chickens (Minutes of Hearing, page 44); that the taxpayers used a portion of the farm land acquired for the planting of wheat and corn (Minutes of Hearing, page 34); that on their unincorporated business tax return for 1955 (Tax Commission's Exhibit A) the taxpayers deducted depreciation on the farm buildings situated on the property acquired by them in 1947; that the use by the taxpayers of the aforementioned property was connected and integrated with their poultry farm business.

(3) That on May 25, 1955, the taxpayers entered into a contract for the sale of the real property, and the purchaser paid \$22,500 on account; that on January 20, 1956, the taxpayers received an additional \$42,750 and a purchase money mortgage; that a deed was executed and delivered by the taxpayers to the purchaser on January 20, 1956; that the contract provided that the taxpayers reserve the right to remove the shrubbery surrounding the buildings, and further provided that the taxpayers were to have the exclusive use of the dwellings and buildings until August 15, 1956; that the taxpayers continued the operation of the poultry farm on the premises until September, 1956 when they removed and continued to operate a poultry farm at Remsenburg, N. Y. until some time in 1964; that in 1960 the purchasers paid to the taxpayers in satisfaction of the purchase money mortgage the balance due; that the taxpayers concede that the sale of the real property on the installment basis was consummated in the year 1956.

(4) That the taxpayers filed an unincorporated business tax return for the year 1956 in which they reported net profit from operation of poultry farm and no tax due; that on February 10, 1961, they filed an amended unincorporated business tax return claiming they "sold their poultry farm plus considerable woodland in Commack, N. Y. for \$221,729.85 and received \$22,500 as a first payment in 1955; that shortly after January 1, 1956, a further payment of \$42,229.85 was received"; that they erroneously assumed that the payment received in 1956 was included in the 1955 return; that they allocated 30% of the installment gain realized on the sale of the land and buildings to the sale of "poultry farm" attributable to unincorporated business tax and 70% to the sale of "vacant unused land" which they treated subject to capital gain tax only; that the taxpayers computed unincorporated business tax due in the amount of \$105.66 and paid the same; that on June 23, 1965, the taxpayers filed a claim for refund of the unincorporated business tax paid for the year 1956 upon the ground that no portion of the gain of the sale of the real property is subject to unincorporated business tax.

(5) That the taxpayers duly executed consents for the year 1956 extending the time to make an assessment until April 15, 1965; that on April 2, 1965, the Department of Taxation and Finance made an additional assessment of unincorporated business taxes against the taxpayers for the year 1956 (Assessment No. FA 3104) adjusting the gain on the installment sale of farm and woodlands by the taxpayer-partnership as a result of a field audit examination; that the gain on the sale of woodlands was held to constitute a capital gain by the partnership subject to unincorporated business tax since the woodlands were part of the land or real property sold by the taxpayer-partnership; that credit was allowed for the unincorporated business tax computed and paid with the amended unincorporated business tax return in the amount of \$105.66 for the year 1956; that additional unincorporated business tax was imposed in the amount of \$1,637.19;

that the taxpayers paid said assessment and on June 23, 1965 filed a claim for refund thereof.

(6) That the real property sold by the taxpayers in 1956 constituted property used in the trade or business of the taxpayer-partnership.

(7) That the real property acquired by the taxpayers was not held by them for investment purposes.

(8) That the claim for refund of unincorporated business taxes in the amount of \$105.66 filed on June 23, 1965 was not filed within two years from the date of filing of said amended return, namely, February 10, 1961.

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

DECIDES:

(A) That the claim for refund of unincorporated business taxes paid in the amount of \$105.66 for the year 1956 was not timely filed within two years of the date of the filing of such amended return in accordance with Section 374 of the Tax Law.

(B) That the installment gain realized by the taxpayers on the sale of the real property was not exempt from unincorporated business tax since the taxpayer-partnership was not engaged in the holding, leasing or managing of real property during the years involved herein.


(C) That the gain on the sale of the woodlands was subject to unincorporated business tax since it was part of the land or real property sold by the taxpayer-partnership.

(D) That, accordingly, the assessment of additional unincorporated business taxes against the taxpayers for the year 1956 (Assessment No. FA 3104) is correct; that the same does not include any tax or other charge which could not have been lawfully demanded; that the taxpayers' claims for refund filed with respect thereto and treated as an application for revision

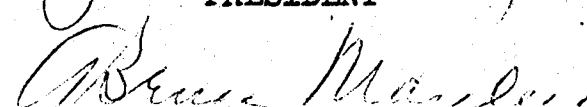
or refund is in all respects denied.

Dated: Albany, New York, the 22nd day of April, 1968.


STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER