

*Unincorp. Bus. Tax*  
BUREAU OF LAW *Determinations A-Z*

MEMORANDUM

*Mund, Irving & Muriel*

TO: State Tax Commission

FROM: Solomon Sies, Hearing Officer

SUBJECT: MURIEL MUND AND IRVING MUND  
d/b/a FAIRVIEW REALTY COMPANY

Application for Revision or Refund of  
Unincorporated Business Taxes under  
Article 16-A of the Tax Law for the  
Fiscal Years ending June 30, 1954,  
June 30, 1955, June 30, 1956, June 30,  
1957, June 30, 1958, June 30, 1959 and  
June 30, 1960

*x - ref*  
*J.B.T. Determinations*  
*A-Z*  
*Fairview Realty Co.*

A formal hearing was held in the above matter at the New York City office on November 25, 1968.

The issue involved herein is whether the taxpayer partnership is entitled to refunds of unincorporated business taxes where such applications for refund were not timely filed. Determinative of the issue is whether there are no questions of fact or law involved so that the taxpayer, nevertheless, would be entitled to refunds pursuant to the provisions of Section 373(3) of the Tax Law.

Irving Mund and his sister-in-law, Muriel Mund, formed a partnership under the name of Fairview Realty Company on July 1, 1953. Each of the co-partners owns a 50% interest in the assets of the partnership but profits and losses are shared on a ratio of 60% for Muriel Mund and 40% for Irving Mund. The partnership owns an apartment building at 1630 Macombs Road, Bronx, New York. It maintained its office at 89-91 Fairview Avenue, New York City. It reported its income on an accrual basis using a fiscal year ending June 30. The taxpayer filed partnership and unincorporated business tax returns for the fiscal years ending June 30, 1954 through and including June 30, 1960 and paid unincorporated business taxes computed on said returns which bear a notation that the taxpayer's business is "real estate."

On March 19, 1964, for the first time, the taxpayer filed applications or claims for refunds of unincorporated business taxes paid for all of the above-mentioned years contending that it 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 of the Tax Law. The representative for the taxpayer stated at the hearing that unincorporated business tax returns were also filed for fiscal years ending June 30, 1961 through June 30, 1963; that applications for refund of taxes for said years were also filed on March 19, 1964 and that refunds for the fiscal years

ending June 30, 1961 through June 30, 1963 were granted. Refunds for the fiscal years ending June 30, 1954 through June 30, 1960 were denied, since the applications or claims for refund were not filed timely within the two-year limitation period set forth in Section 374, Article 16, of the Tax Law. The taxpayer, however, contends that the provisions of Section 373(3) of Article 16 are applicable, urging that there are no questions of fact or law involved.

In Matter of Northern Boulevard & Main Realty Co. (formal hearing determination, d. September 27, 1966), copy attached, under almost identical facts, it was held that applications for refund were not timely filed and that the provisions of Section 373(3) of the Tax Law did not apply.

I am of the opinion that the question as to whether or not the taxpayer was engaged solely in the holding, leasing or management of real property presented questions of fact or law; that the mere fact that such questions were resolved in favor of the taxpayer for the fiscal years ending June 30, 1961 through June 30, 1963 does not mean that such questions were eliminated in prior years. Accordingly, I recommend that the applications of the taxpayer for refunds for the fiscal years ending June 30, 1954 through and including June 30, 1960 be dismissed.

SOLOMON SIES

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Hearing Officer

SS:rlp

Enc.

February 25, 1969

*Sent to Commission 3/4/69*

## BUREAU OF LAW

## MEMORANDUM

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.

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Hearing Officer

August 30, 1966

MS:cp

Encs.

STATE OF NEW YORK

STATE TAX COMMISSION

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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  
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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.

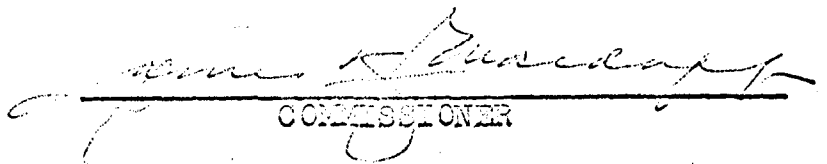
And it is So Ordered.

DATED: Albany, New York this 27th day of September, 1966.

STATE TAX COMMISSION

  
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PRESIDENT

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COMMISSIONER

  
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COMMISSIONER

**STATE OF NEW YORK**  
**STATE TAX COMMISSION**

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**IN THE MATTER OF THE APPLICATIONS**

**OF**

**MURIEL MUND AND IRVING MUND**  
**c/b/a FAIRVIEW REALTY COMPANY**

**FOR REVISION OR REFUND OF UNINCORPORATED**  
**BUSINESS TAXES UNDER ARTICLE 16-A OF THE**  
**TAX LAW FOR THE FISCAL YEARS ENDING**  
**JUNE 30, 1954, JUNE 30, 1955, JUNE 30,**  
**1956, JUNE 30, 1957, JUNE 30, 1958,**  
**JUNE 30, 1959 AND JUNE 30, 1960**  
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Fairview Realty Company, the taxpayer partnership herein, having filed applications for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the fiscal years ending June 30, 1954 through and including June 30, 1960 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, New York on the 25th day of November, 1968 before Solomon Sies, Hearing Officer of the Department of Taxation and Finance at which hearing the taxpayer was represented by Julius Scher, CPA, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayer filed partnership and unincorporated business tax returns for the fiscal years ending June 30, 1954 through and including June 30, 1960 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 such returns; that the returns for the fiscal years ending June 30, 1954 through and including June 30, 1960 bear a notation that the taxpayer's business is "real estate"; that each of the returns lists income as

being derived from rents and royalties and the kind of property from which such income is derived is listed as a brick apartment house.

(2) That on March 19, 1964, the taxpayer filed applications for refund of taxes paid for the fiscal years ending June 30, 1954 through and including June 30, 1960 together with claims for refund for years subsequent to those in issue; that the applications for refund of taxes for the years in issue are 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 fiscal years ending June 30, 1961 through June 30, 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 on the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

**DETERMINES:**

(A) That the applications for refund with respect to the fiscal years ending June 30, 1954 through and including June 30, 1960 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) The 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, therefore, is not entitled to relief under the provisions of Section 373(3) of the Tax Law.

(C) That, accordingly, the taxpayer's application for refund of unincorporated business taxes paid for the fiscal years ending June 30, 1954 through and including June 30, 1960 be and the

same are hereby dismissed.

Dated: Albany, New York this 10th day of March, 1969.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**President**

*Abner M. Muley*  
**Commissioner**

/s/

MILTON KOERNER

**Commissioner**