

STATE OF NEW YORK
STATE TAX COMMISSION

Berran
UBT
1970

In the Matter of the Petition

of

Robert J. Jr. and Mary C.
Berran

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1963 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

deposited
CH & 1
99-334

State of New York
County of Albany

I, Claire A. Dravesw, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of November, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Robert M. Jr. and Mary C. Berran (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert J. Jr. and Mary C. Berran
239 Plandome Road
Manhasset, New York
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

30th day of November, 1970.

Just Wright

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT J. JR. & MARY C. BERRAN	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Busi-	:	
ness Taxes under Article 23 of the Tax	:	
Law for the year 1963	:	

Taxpayers petitioned for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1963. A formal hearing was held before Lawrence A. Newman, Hearing Officer, at the offices of the State Tax Commission in the City of New York on November 25, 1969. The petitioner appeared pro se. The Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq. of counsel).

FINDINGS OF FACT

1. Taxpayers filed a New York State Resident Return and an Unincorporated Business Tax Return for the year 1963.

2. On July 11, 1966, the Income Tax Bureau issued a notice of deficiency, file numbered 2-8390962, for the year 1963 totalling \$1,706.62 plus statutory interest.

The deficiency was based on a finding by the Income Tax Bureau that the income received from condemned property was not used to purchase a replacement; and the gain realized thereon, \$43,761.87, is subject to the unincorporated business tax.

3. Robert J. Berran Jr. purchased a parcel of land near Norwich, Long Island, in 1950. Shortly thereafter, Mr. Berran leased the land to the Esso Oil Company who, in turn, erected thereon and leased to him a service station. Taxpayer operated the service station for the total length of time that the structure existed on

a portion of the property. New York State later acquired the total tract of land, including the gas station and unimproved portion of the property, in condemnation proceedings.

4. Mr. Berran did not reinvest the resulting condemnation award.

5. The ownership and leasing of the real property to the oil company was directly related to the business of running the service station, and the gain from the disposition of the property is deemed to be income from the conduct of an unincorporated business.

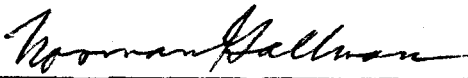
DECISION

A. The condemnation award is unincorporated business income within the terms of Article 23 of the Tax Law, and the gain is subject to the unincorporated business tax.


B. The assessment is sustained, and the petition is denied.

DATED: Albany, New York
November 27, 1970

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER