

STATE OF NEW YORK
STATE TAX COMMISSION

Karweck, R.
O.B.T 23

1970

In the Matter of the Petition

of
Richard Karweck & Raymond Karweck
d/b/a/ Seneca Motel

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

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) 1961

State of New York
County of Albany

Martha Funaro, 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 5th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Richard Karweck & Raymond Karweck (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Oscar S. Block C.P.A.
533 University Avenue
Rochester, New York 14607

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

5th day of January, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Richard Karweck & Raymond Karweck
d/b/a/ Seneca Motel
For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
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Seneca Motel
Waterloo, New York

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Sworn to before me this

5th day of January, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD KARWECK AND RAYMOND KARWECK	:	DECISION
d/b/a SENECA MOTEL	:	
for Redetermination of Deficiency or	:	
Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1961	:	

Petitioners, Richard Karweck and Raymond Karweck d/b/a Seneca Motel, have filed a petition for redetermination of deficiency or refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1961. (File No. 2368) A formal hearing was held before Frank DeBellis, Hearing Officer, at the Offices of the State Tax Commission, State Campus, Albany, New York, on November 15, 1965. Petitioners appeared by Oscar S. Block, C.P.A.

FINDINGS OF FACT

1. Petitioners, Richard Karweck and Raymond Karweck d/b/a Seneca Motel, filed an unincorporated business tax partnership return for the year 1961.

2. On April 13, 1965, the Income Tax Bureau issued a statement of audit changes against petitioners, Richard Karweck and Raymond Karweck d/b/a Seneca Motel, imposing additional unincorporated business tax upon the gain realized by the partnership from the sale of land owned by it during the year 1961, upon the ground that the land prior to sale had been used in the business activities of the partnership and accordingly issued a notice of deficiency therefor in the sum of \$363.37.

3. In 1946 petitioners acquired a parcel of land at Waterloo, New York consisting of 109.1 acres at a cost of \$12,320.00 for the express purpose of building a motel. In 1951 they built a motel on the part of the parcel lying south of Route 5-20 and

operated the motel continuously to and including the year 1961 and thereafter.

4. In 1958 the State of New York acquired title to a portion of petitioners parcel lying north of Route 5-20 and paid a condemnation award of \$25,945.96. The allocated cost of the property so acquired by the State of New York was \$2,500.00.

5. In 1958 the petitioners sold a portion of the parcel lying north of Route 5-20 to Empire Properties at a price of \$50,000.00. The allocated cost of the property sold to Empire Properties was \$2,070.00.

6. In 1960 the petitioners sold another portion of the parcel lying north of Route 5-20 to Empire Properties at a price of \$50,000.00. The allocated cost of the property sold to Empire Properties was \$1,250.00. Since only \$5,000.00 was received in the year of the sale, they elected to report this income on the installment basis. In 1961 they received an installment payment of \$5,000.00 of which \$125.00 was allocated to cost and the balance of \$4,875.00 represented income.

7. From the date of the purchase of the entire parcel in 1946, the petitioners held it as one single unit of business property for the purpose of operating the motel business. The entire parcel was treated as a single unit on real property tax bills. Taxes and other expenses were included in and paid on the single unit as part of the motel business. Neither the parcel acquired by the State of New York nor the parcels conveyed to Empire Properties in 1958 and 1961 was theretofore segregated or separated in any manner. Petitioners never solicited any purchaser for either of the parcels or ever offered or listed any of the real estate for sale. The conveyance to the State of New York came about as a result of an involuntary conversion and the conveyances to Empire Properties as a result of unsolicited sales.

CONCLUSIONS OF LAW

A. That the income received by petitioners, Richard Karweck and Raymond Karweck d/b/a Seneca Motel, in the year 1961 from Empire Properties for acquisition of real property constituted income from the use of an asset connected with their motel business and not income received solely by reason of holding, leasing or managing real property exempt from imposition of unincorporated business tax in accordance with the meaning and intent of Section 703(e) of the Tax Law and 20 NYCRR 281.2 Q. 23-C.

B. That the aforesaid real estate transactions of petitioners Richard Karweck and Raymond Karweck d/b/a Seneca Motel, during the year 1961 constituted the carrying on of an unincorporated business and the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of Section 703 of the Tax Law.

C. That the Income Tax Bureau incorrectly determined the additional business income received by petitioners, Richard Karweck and Raymond Karweck d/b/a Seneca Motel, in 1961, from the sale of the real property in 1960 at \$9,750.00 as the correct amount was \$4,875.00.

D. That the petition of Richard Karweck and Raymond Karweck d/b/a Seneca Motel is granted to the extent of reducing taxable business income for the year 1961 from \$16,381.85 to \$11,608.33 and the unincorporated business tax from \$655.27 to \$464.33 and the notice of deficiency issued April 13, 1965 is reduced to \$138.10 together with such interest as may be due from said date and except as so granted the petition is in all other respects denied.

DATED: Albany, New York
December 31, 1960

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

James Mawley

COMMISSIONER

Milton Korman

COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Richard Karweck & Raymond Karweck
d/b/a/ Seneca Motel

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) 1958

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

State of New York
County of Albany

Martha Funaro , 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 5th day of January , 1971 , she served the within Notice of Decision (or Determination) by (certified) mail upon Richard Karweck & Raymond Karweck (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Richard & Raymond Karweck
Seneca Motel
Waterloo, 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

5th day of January , 19 71

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
Richard Karweck & Raymond Karweck
d/b/a Seneca Motel

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) 1958

State of New York
County of Albany

Martha Funaro , 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 5th day of January , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Richard Karweck
& Raymond Karweck (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
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known address of the (representative of the) petitioner.

Sworn to before me this

5th day of January , 1971

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application :
of :
RICHARD KARWECK AND RAYMOND KARWECK : DETERMINATION
d/b/a SENECA MOTEL :
for Revision or Refund of Unincorporated :
Business Taxes under Article 16-A of the :
Tax Law for the year 1958 :
:

Applications, Richard Karweck and Raymond Karweck d/b/a Seneca Motel, have filed an application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1958. (File No. B 826675) A formal hearing was held before Frank DeBellis, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on November 15, 1965. Applicants appeared by Oscar S. Block, C.P.A.

FINDINGS OF FACT

1. Applicants, Richard Karweck and Raymond Karweck d/b/a Seneca Motel, filed an unincorporated business tax partnership return for the year 1958.
2. On December 16, 1960, the Income Tax Bureau issued a notice of additional assessment against applicants, Richard Karweck and Raymond Karweck d/b/a Seneca Motel, imposing additional unincorporated business tax upon the gain realized by the partnership from the sale of land owned by it upon the ground that the land prior to sale had been used in the business activities of the partnership and assessed additional unincorporated business tax against it in the sum of \$2,605.94.

3. In 1946 applicants acquired a parcel of land at Waterloo, New York consisting of 109.1 acres at a cost of \$12,320.00 for the express purpose of building a motel. In 1951 they built a motel on the part of the parcel lying south of Route 5-20 and operated the motel continuously to and including the year 1958 and thereafter.

4. In 1958 the State of New York acquired title to a portion of applicants parcel lying north of Route 5-20 and paid a condemnation award of \$25,945.96. The allocated cost of the property so acquired by the State of New York was \$2,500.00.

5. In 1958 the applicants sold a portion of the parcel lying north of Route 5-20 to Empire Properties at a price of \$50,000.00. The allocated cost of the property sold to Empire Properties was \$2,070.00.

6. From the date of the purchase of the entire parcel in 1946, the applicants held it as one single unit of business property for the purpose of operating the motel business. The entire parcel was treated as a single unit on real property tax bills. Taxes and other expenses were included in and paid on the single unit as part of the motel business. Neither the parcel acquired by the State of New York nor the parcel conveyed to Empire Properties in 1958 was theretofore segregated or separated in any manner. Applicants never solicited any purchaser for either of the parcels or ever offered or listed any of the real estate for sale. The conveyance to the State of New York came about as a result of an involuntary conversion and the conveyance to Empire Properties as a result of an unsolicited sale.

CONCLUSIONS OF LAW

A. That the income received by applicants, Richard Karweck and Raymond Karweck d/b/a Seneca Motel, in the year 1958 from the State of New York and from Empire Properties for acquisition of real property

constituted income from the use of an asset connected with their motel business and not income received solely by reason of holding, leasing or managing real property exempt from imposition of unincorporated business tax in accordance with the meaning and intent of Section 703(e) of the Tax Law and 20 NYCRR 281.2 Q. 23-C.

B. That the aforesaid real estate transactions of applicants, Richard Karweck and Raymond Karweck d/b/a Seneca Motel during the year 1958 constituted the carrying on of an unincorporated business and the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of Section 703 of the Tax Law.


C. That the application of Richard Karweck and Raymond Karweck is denied and the notice of additional assessment dated December 16, 1960, is sustained.

DATED: Albany, New York
December 31, 1970

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER