

STATE OF NEW YORK  
STATE TAX COMMISSION

V.B.T.  
Strenger  
1970

In the Matter of the Petition

of

Karol & Sara Strenger

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 & 1962

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

State of New York  
County of Albany

Claire A. Draves

, 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 Bernard L. Miller

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Bernard L. Miller  
201 W 72nd Street  
New York, New York 10023

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

Janet Wright

Claire A. Draves

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
Karol & Sara Strenger

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Tax Law for the (Year(s) 1961 & 1962 :

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Claire A. Draves , 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 Karol & Sara  
Strenger (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Karol & Sara Strenger  
3 Remsen Road  
Yonkers, 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

John Wright

Claire A. Draves

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
KAROL AND SARA STRENGER  
for a Redetermination of a Deficiency  
or for Refund of Unincorporated Busi-  
ness Taxes under Article 23 of the Tax  
Law for the years 1961 and 1962

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DECISION

Karol and Sara Strenger, his wife, have petitioned for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962. A formal hearing was held in the offices of the State Tax Commission in the City of New York on December 11, 1969. The petitioners appeared through Bernard L. Miller, CPA, and the Income Tax Bureau was represented by Edward H. Best, Esq. (Albert Rossi, Esq., of counsel).

FINDINGS OF FACT

1. The petitioners did not file unincorporated business tax returns for the years 1961 and 1962.
2. On March 29, 1965, the Income Tax Bureau issued notice of deficiency to Karol and Sara Strenger, his wife, for the year 1961 of unincorporated business taxes in the sum of \$577.07. The deficiency was based upon net business income for the year and upon gain on the sale of a nursing home operated by the petitioners. The amount of \$3757.01, which represented operating loss for the nursing home, was not used in the computation of the 1961 deficiency.
3. On July 11, 1966, the Income Tax Bureau issued notice of deficiency of unincorporated business tax for the year 1962 in the sum of \$1286.68. The deficiency was based upon the gain on the sale of business assets, which included a structure in Bayshore being

converted, an installment gain on two properties in New York City, and a capital gain on a mutual fund.

4. Karol and Sara Strenger, his wife, timely filed petitions for redetermination for the years 1961 and 1962.

5. On the federal tax return for 1961 the property located in Bayshore is combined with property in New York City on schedule entitled "Schedule of Income and Expense from Rents, (Furnished Apartments)".

6. The building at this Bayshore address was in the process of being converted to a multiple-unit dwelling when it was destroyed by fire.

7. The taxpayers have failed to sustain the burden of proof that the structure after conversion was intended to be rented solely in an unfurnished state, or that the structure prior to destruction by fire was used solely as a personal residence. The property is deemed to be held for unincorporated business purposes.

8. A dividend reported as capital gain from the Wellington Fund totalling \$36.17 was used in computing the 1962 deficiency.

#### DECISION

A. Notice of deficiency for the year 1961 is erroneous to the extent that the petitioners should be allowed an offset of \$3757.03 against the net business income used in computing the deficiency, and the petition for redetermination with respect thereto is granted.

B. Notice of deficiency for the year 1962 regarding the unincorporated business tax due on the proceeds from the sale of property located at 56 South Clinton Avenue, Bayshore, Long Island, is correct and the petition for redetermination with respect thereto is denied.

C. Notice of deficiency for the year 1962 regarding the unincorporated business tax due on the dividend from the Wellington

Fund is incorrect and the petition for redetermination with respect thereto is granted.

D. Notices of deficiencies are reduced to read as follows:

<u>1961</u>	\$ 9,406.82	net business income reported
	<u>3,757.03</u>	net operating loss omitted from computation
	\$ 5,649.79	net business income adjusted
	<u>9,433.71</u>	gain on sale of nursing home
	\$15,083.50	net business income adjusted
	<u>3,016.70</u>	personal service credit
	\$12,066.80	Balance
	<u>2,767.40</u>	Exemption prorated to date of sale 7/21/61
	\$ 9,299.40	Amount subject to unincorporated business tax
		<u>\$411.98</u> unincorporated business tax due at 4%
 <u>1962</u>	 \$31,934.60	 gain on sale of business assets used originally to compute deficiency
	<u>36.17</u>	capital gain, Wellington Fund
	\$31,898.43	gain on sale of business assets
	<u>5,000.00</u>	Exemption
	\$26,898.43	amount subject to unincorporated business tax, adjusted
	<u>1,075.94</u>	unincorporated business tax due at 4%

DATED: Albany, New York  
November 27, 1970

STATE TAX COMMISSION

Norman Skellern  
COMMISSIONER

Bruce Manley  
COMMISSIONER

Milton Koerner  
COMMISSIONER