

STATE OF NEW YORK
STATE TAX COMMISSION

Orson, Theresa
U.B.T.

1971

In the Matter of the Petition

of

Theresa Orso (deceased)

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) 1965 & 1966:

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 11th day of February , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Irwin
Lehmann (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Irwin Lehmann
122 East 42nd Street
New York, 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

11th day of February , 1971

James S. Van Pelt
Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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a Refund of Unincorporated Business
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1965 & 1966 :

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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 11th day of February , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Theresa Orso
(deceased) (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Theresa Orso (deceased)

13 Galway Place
Huntington, New York 11743

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

11th day of February , 1971.

[Signature]

Notary Public

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THERESA ORSO (deceased)	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for years 1965 and 1966.	:	

Petitioner, Theresa Orso (deceased), has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965 and 1966. (File #66139349). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on December 15, 1970 at 9:15 a.m. James Orso, as executor of the estate of Theresa Orso, deceased, appeared by Irwin Lehmann, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

FINDINGS OF FACT

1. Petitioner, Theresa Orso, filed New York State Income Tax Resident Returns for the years 1965 and 1966. She did not file unincorporated business tax returns for said years.

2. On May 26, 1969 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Theresa Orso, imposing unincorporated business tax upon the income received by her during the years 1965 and 1966 from the sale of business assets and from interest earned on an award received for said business assets upon the grounds that said income constituted business income subject to unincorporated business tax pursuant to Article 23 of the Tax Law. It also imposed penalties pursuant to section 685(a) of the Tax Law for failure to file

unincorporated business tax returns in the sums of \$737.18 for the year 1965 and \$318.09 for the year 1966. In accordance with the aforesaid, a Notice of Deficiency in the sum of \$8,139.04 was issued.

3. During the year 1927 petitioner, Theresa Orso, and her husband purchased 18.140 acres of farm land located in Woodbury, New York. In 1940 her husband died and she became the sole owner of the property. On November 17, 1964 the State of New York through the Long Island State Park Commission condemned 11.344 acres of said property.

4. On February 24, 1965 petitioner, Theresa Orso, received a partial payment including interest on the condemnation award of \$100,262.48 On November 10, 1966 she received a final payment, including interest, of \$106,507.86.

5. Petitioner, Theresa Orso, operated a farm on various portions of the property. From 1955 on, she raised flowers and vegetables which were sold at a roadside stand located on the property. She had gross sales of farm products of \$18,919.53 in 1963, \$17,610.35 in 1964, \$19,208.66 in 1965 and \$13,888.52 in 1966. She farmed the condemned portion of the tract until 1963 when in contemplation of the proposed condemnation she ceased substantial farming activity thereon and shifted her farming activity to the remaining parcel.

6. On the advice of her accountant, petitioner, Theresa Orso, did not file unincorporated business tax returns for the years 1965 and 1966.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Theresa Orso, during the years 1965 and 1966 from the State of New York for acquisition of real property constituted income from the use of an asset connected with her farm 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 281.20 23-C.


B. That the aforesaid real estate transactions of petitioner, Theresa Orso, during the years 1965 and 1966 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.

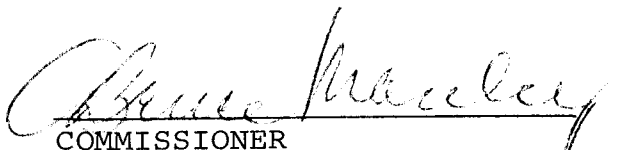
C. That the petitioner, Theresa Orso, had reasonable cause for not filing any unincorporated business tax returns for the years 1965 and 1966 and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.


D. That the petition of Theresa Orso, (deceased), is granted to the extent of cancelling penalties imposed pursuant to section 685(a) of the Tax Law for the years 1965 and 1966 in the total sum of \$1,055.27 and the Notice of Deficiency issued May 26, 1969 is reduced from \$8,139.04 to \$7,083.77 plus such interest as may be due from May 26, 1969 and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
February 11, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER