

STATE OF NEW YORK  
STATE TAX COMMISSION

*Neinofsky*  
1971  
23

In the Matter of the Petition

of

Joseph & Dorothy Wesnofske

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

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 25th day of February, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Joseph & Dorothy Wesnofske (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Joseph & Dorothy Wesnofske  
22 Gwynne Road  
Huntington Station, 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

25th day of February, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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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 25th day of February, 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Bernard J.

Wesnofske (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Bernard J. Wesnofske  
153 Haverford Road  
Hicksville, New York 11801

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

25th day of February, 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JOSEPH AND DOROTHY WESNOFSKE :  
for a Redetermination of a Deficiency or : DECISION  
for Refund of Unincorporated Business Taxes :  
under Article 23 of the Tax Law for the :  
Year 1963. :  
:

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Joseph and Dorothy Wesnofske have 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, in the offices of the State Tax Commission in the City of New York on October 28, 1970. The Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq. of Counsel), and the taxpayers by Bernard J. Wesnofske, Esq.

FINDINGS OF FACT

1. The petitioners timely filed a New York State Combined income tax return for the year 1963, but did not file an unincorporated business tax return.

2. On March 15, 1967, the petitioners signed a consent extending the period of limitation upon assessment for the year 1963, to April 15, 1968.

3. On April 1, 1968, the Income Tax Bureau issued a Notice of Deficiency under File No. 3-7582015 in the amount of \$7,058.48, plus interest.

The deficiency was based on a finding that interest received on a condemnation award and the gain realized on the involuntary conversion of certain real property was subject to the unincorporated business tax.

4. On December 28, 1967, the petitioners paid the sum of \$2,000.00 on account.

5. On July 5, 1968, the petitioners filed a petition for redetermination or for refund, which was accepted by the Income Tax Bureau as the equivalent of a timely claim for refund.

6. The petitioners purchased four contiguous parcels of land in Melville, New York and assembled them into one parcel totaling approximately sixty acres. The agreement to purchase was made in the year 1950. All parcels had defective titles and good title was obtained for each parcel after lengthy legal and court action.

7. The petitioners cleared the land of garbage, junk and debris over a period of years. In the year 1951, a cinder-block garage was constructed for the use of a son who was in the trucking business. In the year 1954, the petitioners constructed a house for their own residential use.

8. During the years 1957, 1958 and 1959, the petitioners reported income from the sale of crops, and expenses from farm operations, upon the property in question, and described their farming activities as "potatoes and turnips." The petitioners owned farm equipment, upon which, depreciation was claimed for the years 1957, 1958 and 1959. During the year 1960, farming operations were conducted by a son on the land in question. During the year 1956, a portion of the property was leased to a tenant farmer at a fixed rental.

9. The property was appropriated by the State of New York on June 13, 1960, for the purpose of constructing a home for retarded children. After litigation of the petitioners claim, a decision and award was made by the Court of Claims on January 7, 1963.

DECISION

A. The petitioners utilized the property in question in farming operations, and the activities constitute the carrying on of an unincorporated business.

B. The interest and gain realized on the involuntary conversion of the property is subject to the unincorporated business tax.

C. The deficiency is sustained, and the claim for refund is denied.

DATED: Albany, New York

*February 25, 1977*

STATE TAX COMMISSION

*Norman L. Gellerson*

COMMISSIONER

*Bruce Manley*

COMMISSIONER

*Milton Koern*

COMMISSIONER