

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

AMBROSE J. & HARRIETTE TROMBLEY

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) 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 4th day of December, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon AMBROSE J. &
HARRIETTE TROMBLEY (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Ambrose J. & Harriette Trombley
Sleepy Hollow Road
Rome, New York 13440

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

4th day of December, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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AMBROSE J. & HARRIETTE TROMBLEY

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of December, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon GRIFFITH &
PILECKAS (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Griffith & Pileckas
Professional Building
225 North Washington Street
Rome, New York 13440
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.

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Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
December 4, 1972

Ambrose J. & Harriette Trombley
Sleepy Hollow Road
Rome, New York 13440

Dear Mr. and Mrs. Trombley:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AMBROSE J. & HARRIETTE TROMBLEY	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1966.	:	

The taxpayers petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the year 1966.

A formal hearing was held at the offices of the State Tax Commission, Utica, New York, on March 16, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Griffith & Pileckas and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Was the sale of 38 acres of land by the taxpayers subject to unincorporated business tax?

FINDINGS OF FACT

1. Petitioners, Ambrose J. and Harriette Trombley, timely filed New York State income tax returns for the year 1963.

2. A Notice of Determination of a deficiency in unincorporated business tax for the year 1966 was issued on February 10, 1969, against the taxpayers under File No. 58076023.

3. The taxpayer petitioned for redetermination of the deficiency.

4. The taxpayers owned about 80 acres of land the the Town of Lee. The taxpayer inherited the land in 1930. There were 38 acres in one parcel and the balance in another parcel. A separate real property tax bill was issued for each parcel. The taxpayers operated a dairy farm which they discontinued at the end of 1965 when they sold their cattle and stopped dairy farming.

5. In 1966, the taxpayers sold the 38 acres for \$45,000.00 to be used as a town park. Thirty of the acres were farm woodland. Eight of the acres were used as afterfeed pasture when the taxpayers had their dairy herd. The Income Tax Bureau asserted the gain on the sale of the land was subject to unincorporated business tax.

6. In 1966 and 1967, the taxpayers reported farm income and losses on their state tax returns.

7. The taxpayers asserted that they conducted no farming operations on 30 of the 38 acres and only used eight acres for farming for afterfeed purposes when they owned the dairy herd.

CONCLUSIONS OF LAW

A. The entire farm was a unit and all of the land belonged to the farm. The petitioners conducted a farming operation in 1966, although they sold their herd in 1965. Joseph and Dorothy Wesnofske, State Tax Comm. dec. Feb. 25, 1971. Furthermore, even if the farming operation were discontinued, the gain would be taxable as gain on the sale or liquidation of the business assets.

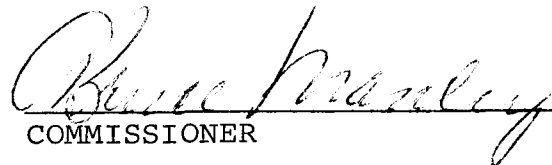
B. The taxpayer's petition is denied and the determination of the deficiency is sustained.

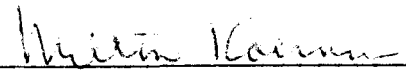
C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
December 4, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER