

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BRAEMAR COUNTRY CLUB

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)) 1962 through :  
1968

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 22nd day of February , 1973 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon BRAEMAR COUNTRY

CLUB (representative of) the petitioner in the within

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

wrapper addressed as follows:

Braemar Country Club  
299 Straub Road  
Rochester, New York 14626

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

22nd day of February , 1973

Lynn C. Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BRAEMAR COUNTRY CLUB

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business:  
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Tax Law for the (Year(s) 1962 through :  
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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 22nd day of February, 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon VINCENT J.

DI RAIMO (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Vincent J. Di Raimo  
714 Titus Avenue  
Rochester, 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

22nd day of February, 1973.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
February 22, 1973

Breemar Country Club  
299 Straub Road  
Rochester, New York 14626

Gentlemen:

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

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In the Matter of the Petition	:	
of	:	
BRAEMAR COUNTRY CLUB	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1962 through 1968.	:	

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Braemar Country Club petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1962 through 1968.

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York on July 13, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Vincent J. Di Raimo and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUE

Where a partnership was dissolved and its assets sold, were profits from the sale of the partnership assets, subsequently paid to the former partners, subject to unincorporated business taxes?

FINDINGS OF FACT

1. Anthony Camelio, Frank Camelio, Joseph Camelio, Patsy Camelio, Sam Camelio, Charles Camelio individually and as co-partners d/b/u the firm name and style of Braemar Country Club timely filed a New York State unincorporated business tax return for the year 1961 but not for any of the subsequent years.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1962 through 1968 was issued on August 31, 1970, against the firm and its co-partners under File No. 0532.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. In July, 1961, the co-partners of the Braemar Country Club sold the golf course, club and assets of the firm to the Braemar Country Club, Inc. at a 77.5% profit for \$200,000.00, which was to be paid to them by cash, stock and an interest bearing mortgage of \$125,000.00 over a term of years. The co-partners assisted in operations of the country club for the balance of the 1961 season but did nothing at the club in subsequent years. The partnership dissolved in July, 1961. Payments of interest and principal were made to the former co-partners during each year in issue.

5. At the hearing, the petitioners contended that the club was a sale by individuals and not subject to unincorporated business tax. The Income Tax Bureau asserted that all gain and interest on the sale was subject to unincorporated business tax.

#### CONCLUSIONS OF LAW

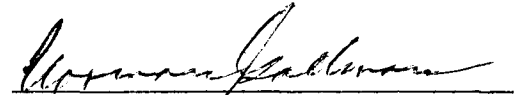
A. The Braemar Country Club, was a "liquidating partnership" by virtue of its liquidation, and it was a partnership in liquidation under 703(a) of the Tax Law. The statute was designed to cover liquidation income, and all profits derived either through the collection of installment obligations outstanding or the sale of other assets in the course of the liquidation. New York State 1952 Legislative Annual, page 349; Louis Berry, David & Bernice Miro, et al., State Tax Commission Dec. January 11, 1971.

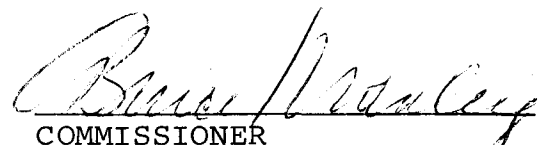
B. The partnership and the partners are liable for the unincorporated business tax as determined by the Income Tax Bureau.

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

DATED: Albany, New York  
February 22, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

MEMORANDUM

TO : Commissioner Manley

FROM : L. Robert Leisner

SUBJECT: Braemar Country Club  
Unincorporated Business Tax  
1962 through 1968

The above taxpayer's counsel has just called my attention to the fact that a formal decision prepared by me and signed by the Commission glosses over the issue of the penalty. In this case, the penalty should be abated and the proper procedure, in view of the time lag, would be through administrative action.

I therefore, recommend that the Commission approve the abatement of the penalty through administrative action.

*L. Robert Leisner*

L. Robert Leisner  
Hearing Officer

September 28, 1973

*Approved  
Manley 10/1/73*

*Approved  
Milton Koenig 10/2/73*

*Approved  
Maurice P. Pinacene 10/4/73*