

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAHLON E. KINTZ & A. EILEEN KINTZ

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

:
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 & 1967 :

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 16th day of October , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Mahlon E. & A. Eileen
Kintz (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Mahlon E. Kintz
2154 Latta Road
Rochester, New York 14612

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

16th day of October , 1974.

Janet Mach

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAHLON E. KINTZ & A. EILEEN KINTZ :

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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 & 1967 :

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 16th day of October , 19 74, she served the within
Notice of Decision (~~or Redetermination~~) by (certified) mail upon William E. Easton, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: William E. Easton, Esq.
Easton, Bittker & Wolf
875 Midtown Tower
Rochester, New York 14604
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

16th day of October , 1974

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT
EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York

October 16, 1974

Mr. & Mrs. Mahlon E. Kintz
2154 Latta Road
Rochester, New York 14612

Dear Mr. & Mrs. Kintz:

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

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner

Enc.

HEARING OFFICER

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE TAX COMMISSION

1. Petitioners, Mahlon E. Kintz and A. Eileen Kintz, timely filed New York State income tax returns for the years 1966 and 1967. They did not file unincorporated business tax returns for said years.

2. A Notice of Determination of deficiencies in personal income and unincorporated business taxes for the years 1966 and 1967, were issued on November 24, 1969, against the taxpayers under File No. 7-74713493.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. Petitioners, Mahlon E. Kintz and A. Eileen Kintz, owned and occupied certain farmlands in Rochester, New York. Said lands were used by them for general farming, dairying and horse boarding purposes. In 1965, petitioner, Mahlon E. Kintz, retired and farming operations ceased. In said year, he sold all farming equipment except for a tractor which he leased out.

5. On May 27, 1966, petitioners, Mahlon E. Kintz and A. Eileen Kintz, sold a portion of their farmland to one Morris E. Richardson for the sum of \$79,830.00. In 1967, they sold a lot to the Peter J. Schmitt Company for \$40,000.00 and they also received \$89,922.31 from the State of New York for land appropriated for highway purposes.

CONCLUSIONS OF LAW

A. Farming constitutes the carrying on of an unincorporated business. Gain from the liquidating sale of farm assets is subject to unincorporated business tax. Section 703 Tax Law, Matter of Yarker, STC, Apr. 5, 1974.


B. Income received from the involuntary conversion of property utilized by the aforesaid unincorporated business was subject to unincorporated business tax. Matter of Wesnofske, STC, Feb. 25, 1971.

C. That the petition of Mahlon E. Kintz and A. Eileen Kintz is denied and the Notice of Deficiency issued on November 24, 1969, is in all respects sustained.

DATED: Albany, New York
October 16, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER