

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL J. LeFRAK

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) 1964, 1965 & :
1966

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 September , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Samuel J. LeFrak

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Samuel J. LeFrak
168 Noye Lane
Woodmere, 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

16th day of September , 1974

Janet Mock

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL J. LeFRAK

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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) 1964, 1965 & :
1966

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 September , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Louis Goldberg,
C.P.A. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Louis Goldberg, C.P.A.

1476 Broadway
New York, New York 10036

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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known address of the (representative of the) petitioner.

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Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

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

ADDRESS YOUR REPLY TO

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

Dated: Albany, New York

September 16, 1974

Mr. Samuel J. LeFrak
168 Noye Lane
Woodmere, New York

Dear Mr. LeFrak:

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,

Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SAMUEL J. LeFRAK :
for a Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the Years 1964, 1965 and 1966. :
DECISION

Samuel J. LeFrak filed a petition under sections 722 and 689 of the Tax Law for the redetermination of a deficiency issued on April 10, 1968 in the amount of \$8,611.43, plus interest of \$978.07, for a total of \$9,589.50, for unincorporated business tax under Article 23 of the Tax Law for the years 1964, 1965 and 1966.

In lieu of a hearing the petitioner has submitted the petition to the State Tax Commission on the file of the Income Tax Bureau. Louis Goldberg, C.P.A. represents petitioner.

Said file has been duly examined and considered.

ISSUE

The primary issue in this case is whether certain salaries received by petitioner should be included in his unincorporated business income derived from managing real estate.

FINDINGS OF FACT

1. Mr. LeFrak is engaged in both the construction and rental of apartment houses and other dwelling units for middle-income tenants. When he first started he generally sold completed

buildings to gain capital for new construction. In later years he has held on to properties either through direct ownership or through close corporations. These properties were managed at first by independent realty management firms but this proved inadequate and too costly so Mr. LeFrak now manages his properties himself through the LeFrak Management Company.

2. Mr. LeFrak receives substantial rents and tax losses from his direct holdings of real estate and receives substantial dividend income from his corporate holdings of real estate. He also has income from his management company and salaries received as an officer of corporations which apparently own real estate.

3. Petitioner filed unincorporated business tax returns for his management activities in 1964, 1965 and 1966. He described this business as real estate management at the address 97-45 Queens Boulevard, Forest Hills, Queens, New York. In 1964, the gross income was \$951,706.43 and net profit was \$65,997.92. In 1965, the gross income was \$964,722.05 and net profit was \$3,454.38. In 1966, the gross income was \$997,269.16 and net profit was \$27,622.25.

Over 60% of the expenses of the company was salaries. Other expenses included agents' expenses, advertising, janitorial supplies, utilities, data processing and office expense. Petitioner has described this management company as "simply a facility created to equitably allocate the cost of management".

4. Mr. LeFrak received salary income from corporations totaling \$45,500.00 in 1964, \$61,000.00 in 1965 and \$83,500.00 in 1966. Federal income and social security taxes were withheld

from these amounts but not New York taxes. The individual corporations and amounts paid were as follows:

| | <u>1964</u> | <u>1965</u> | <u>1966</u> |
|------------------------------|--------------------|--------------------|--------------------|
| Ever Clean Corp. | \$ 6,500.00 | \$ 7,500.00 | \$10,000.00 |
| Grand Leasing Corp. | 3,500.00 | 3,500.00 | 3,500.00 |
| Twin Leasing Corp. | 5,000.00 | 5,000.00 | 5,000.00 |
| Road Leasing Corp. | 7,500.00 | 7,500.00 | 7,500.00 |
| International Leasing | 6,000.00 | 6,000.00 | 7,500.00 |
| Dakota Leasing Corp. | 9,500.00 | | |
| Town Leasing Corp. | 7,500.00 | 7,500.00 | 10,000.00 |
| American Apartment Inc. | | 7,500.00 | 10,000.00 |
| Birch Leasing Corp. | | 5,000.00 | |
| Blue White Leasing Co., Inc. | | 6,500.00 | 5,000.00 |
| Maple Leasing Corp. | | 5,000.00 | 5,000.00 |
| Cadillac Leasing Corp. | | | 15,000.00 |
| Elm Leasing Corp. | | | 5,000.00 |
| TOTAL | <u>\$45,500.00</u> | <u>\$61,000.00</u> | <u>\$83,500.00</u> |

5. Petitioner has described his major duties as (a) establishing policy for rental values to be obtained, (b) negotiations of special leases, (c) negotiations and mortgage financing and refinancing, (d) establishing policy for upgrading the physical properties, (e) analyzing and presenting claims for relief and reduction of real estate taxes on his corporate and noncorporate holdings. These duties apparently relate to the services rendered to the corporations. The petitioner has not, however, described the difference, if any, between the services performed to earn the salary income and the services performed by the management company although a request for such information was made.

6. The deficiency notice adds an amount of \$56,317.96 to income. This is now found to be the sum of \$3,454.38 already declared on the tax return and of \$52,863.58 in profit which petitioner made on Maryland Farms, a horse breeding and racing

venture conducted in Nassau County, New York. It is now conceded that all profits and losses from Maryland Farms should be reflected in the petitioner's unincorporated business income. These amounts are: an operating loss of \$15,873.46 in 1964, a profit of \$52,863.58 in 1965 and a profit of \$7,976.41 in 1966. In addition to the above, the farm sold horses on which it had losses of \$25,990.50 in 1964, \$104,308.36 in 1965 and \$119,132.27 in 1966.

7. It has been conceded by petitioner that the deficiency should include additional income of \$2,730.00 for 1964 and disallowed charitable contributions of \$1,087.75 for 1964 and \$650.48 for 1965. These result from Federal audit adjustments.

8. As a result of the adjustments for Maryland Farms and the Federal audit adjustments, petitioner will get a refund of \$2,313.75, if he is correct as to the nontaxability of the salary income. If the salaries are taxable to the unincorporated business, a refund will still be due but in the amount of only \$302.77. The amount here in issue is therefore \$2,010.98.

CONCLUSIONS OF LAW

The salaries received by Mr. LeFrak are not part of his business of managing real estate.

The refund is granted in the amount of \$2,313.75.

DATED: Albany, New York
September 16, 1974

STATE TAX COMMISSION

Walter D. Brucce

PRESIDENT

James H. Kelly

COMMISSIONER

Milton Korman

COMMISSIONER

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

Louis Goldberg, C.P.A.

1476 Broadway

New York, New York 10036

Handwritten:
F. J. G.
C. P. A.
1476 Broadway
New York, N. Y. 10036



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
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