

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAM MUZEKA

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 and 1967:

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 7th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon SAM MUZEKA

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

Mr. Sam Muzeka
1570 Canandaigua Road
Macedon, New York 14502

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

7th day of February, 1974

Martha Funaro

James S. Van Patten

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAM MUZEKA

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OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

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a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1966 and 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 7th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon JAMES C.

MOORE, ESQ.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
James C. Moore, Esq.

wrapper addressed as follows:

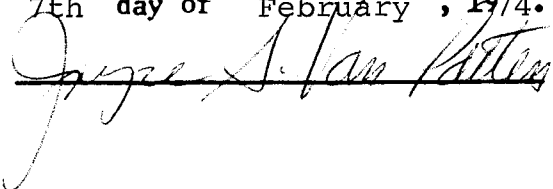
Wiser, Shaw, Freeman, Van Graafeiland,
Harter & Secrest
700 Midtown Tower

and by depositing same enclosed in a postpaid properly addressed wrapper in a
Rochester, New York 14604
(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

7th day of February, 1974.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAM MUZEKA

For a Redetermination of a Deficiency or
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Taxes under Article(s) 23 of the
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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 7th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon PETER L. FABER, ESQ.

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
Peter L. Faber, Esq.

wrapper addressed as follows:

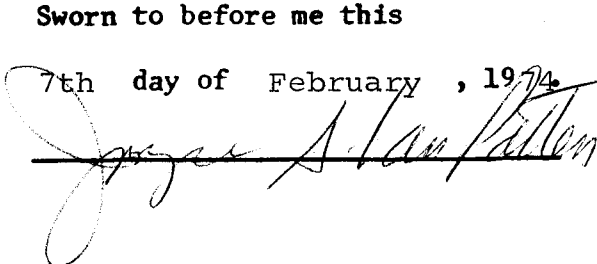
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known address of the (representative of the) petitioner.

Sworn to before me this

7th day of February, 1974.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

STATE TAX COMMISSION

~~MARIO A. PROCACCINO~~
~~STATE TAX COMMISSION~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 7, 1974

Mr. Sam Muzeka
1570 Canandaigua Road
Macedon, New York 14502

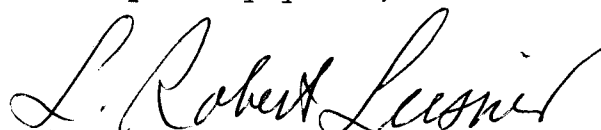
Dear Mr. Muzeka:

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
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SAM MUZEKA	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1966 and 1967.	:	

Sam Muzeka petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1966 and 1967.

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York on January 20, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by James C. Moore, Esq., and Peter L. Faber, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Whether gain realized by petitioner, Sam Muzeka, on the sale of vacant land behind his residence and near property on which he operated a gas station is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Sam Muzeka, is an individual who was engaged as a sole proprietor in the business of owning and operating a gasoline service station at the corner of Mosley Road and New York State Route 31, in the Town of Perinton, New York from 1947 through 1966.

2. On or about December 29, 1969, respondent sent petitioner a statutory notice under File No. 8-18290037, which determined deficiencies in unincorporated business taxes in the following amounts:

for 1966, taxes of \$689.47 and interest of \$111.90; for 1967, taxes of \$2,239.92 and interest of \$229.14.

3. On or about March 20, 1970, petitioner timely filed a petition objecting to the proposed deficiencies and requesting a formal hearing.

4. In 1947, petitioner purchased land and buildings located at the intersection of Mosley Road and Route 31 in the Town of Perinton, New York, from a Mrs. Hall. A gasoline station was located on the corner of the property when petitioner purchased it. Mr. Muzeka purchased the property for the purpose of acquiring a residence and a gas station which he could own and operate. Petitioner attempted to purchase only that part of the property on which the house and gas station was located. The vacant land behind the house and gas station was purchased by petitioner only when Mrs. Hall insisted that it made a part of the sale.

5. The corner of the property on which the house and gas station were located comprised 5.16 acres (hereinafter called the "corner parcel"). The vacant land adjoining the corner parcel on which the gas station and house were located comprised 4.311 acres (hereinafter called the "vacant land"). The gasoline station was located at the southeast corner of the corner parcel at the intersection of Mosley Road and Route 31. The building occupied by petitioner as his personal residence was located northwest of the gas station and immediately behind it. A driveway ran from the garage to Mosley Road, north of the gas station.

6. The 4.311 acres of vacant land were separated from the gasoline station by a residential buffer zone consisting of petitioner's residence, his garage and the driveway.

7. Petitioner operated the gas station during the period from 1947 until its sale in 1966. During the 19 years that petitioner

owned the 4.311 acres of vacant land, he made no attempt to rent it, grow crops on it, use it for storage or in connection with his gas station business, or put it to any income-producing or business use.

8. Petitioner did not claim expenses relating to the vacant land as business deductions on his personal and unincorporated business tax return.

9. Petitioner turned down several offers to purchase the vacant land because the price offered was not high enough. Petitioner held the vacant land for investment purposes so as to profit from an expected increase in land values.

10. Between 1947 and 1951, petitioner operated a trailer park and hot dog stand on the corner parcel. These activities were discontinued after 1951. The trailer park and hot dog stand were not operated on any part of the vacant land. The vacant land was physically separated from the corner parcel at certain points by a row of stones.

11. In the early 1960's, the Socony Mobil Oil Company, Inc., (hereinafter called "Mobil") approached petitioner and indicated a desire to buy the corner parcel in order to operate a gas station. Mobil did not want to buy the vacant land but, rather, only the corner on which the gas station was located. On March 4, 1965, petitioner and Mobil signed a written option agreement giving Mobil the right to purchase the corner parcel at the intersection of Mosley Road and Route 31. The option to Mobil was to expire on June 10, 1966.

12. Petitioner was approached by Wegmans Enterprises, Inc. (hereinafter called "Wegmans"), a food chain, which indicated an interest in buying the parcels. On September 24, 1965, Wegmans delivered to petitioner a signed offer to purchase the vacant

land for \$75,000.00. The purchase offer indicated that it would extend to the corner lot for an additional \$75,000.00 in the event that the option previously granted to Mobil was not exercised. If the option had been exercised by Mobil, Wegmans would have been bound to purchase the vacant land by itself.

13. On September 29, 1965, petitioner accepted the purchase offer from Wegmans. The vacant land was sold to Wegmans on April 5, 1966, pursuant to the purchase contract. Mobil failed to exercise its option and the corner parcel was sold to Wegmans for \$75,000.00 on August 15, 1966. Wegmans paid \$37,500.00 for the residential portion of the corner parcel and \$37,500.00 for the gas station portion of the corner parcel.

14. Of the \$75,000.00 paid by Wegmans for the vacant land, \$21,565.50 was paid in 1966 and the balance in 1967.

15. Petitioner's cost basis in the vacant land was \$3,000.00 and his selling expenses were \$1,141.50. His gain on the sale was \$70,858.50. On his unincorporated business tax returns for 1966 and 1967, petitioner reported one-half of the gain attributable to the corner parcel as unincorporated business income. Gain on the half of the corner parcel attributable to the residence was not so reported, nor was the gain realized on the sale of the vacant land.

16. The vacant land was held by petitioner solely for investment purposes and was not used in connection with or part of the gas station business.

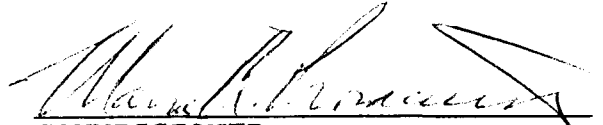
CONCLUSIONS OF LAW

A. The gain on the sale of the vacant land was not unincorporated business income.


B. The taxpayer's petition is granted. It is determined that there is no deficiency in unincorporated business tax for the years 1966 and 1967.

DATED: Albany, New York
February 7, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER