

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OESTREICHER REALTY

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

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 18th day of July , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Oestreicher Realty

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Oestreicher Realty
444 Madison Avenue
New York, New York 10022

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

18th day of July , 1974

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OESTREICHER REALTY

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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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) 1964

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 18th day of July , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Lester W. Rubin, P.C.

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

444 Madison Avenue
New York, New York 10022

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

18th day of July , 1974.

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

July 18, 1974

**Oestreicher Realty
444 Madison Avenue
New York, New York 10022**

Gentlemen:

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	:	
OESTREICHER REALTY	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Personal Income Taxes	:	
under Articles 16 and 22 of the Tax Law	:	
for the Years 1959, 1960, 1961, 1962,	:	
1963 and 1964.	:	

Petitioner, Oestreicher Realty, has filed a petition for a redetermination of a deficiency or for refund of personal income taxes under Articles 16 and 22 of the Tax Law for the years 1959 through 1964. (File Nos. P-3388 and P-103812).

A formal hearing was scheduled to be held. The case was then submitted for decision on information contained in the file.

ISSUE

Do certain management fees reported by the individual partners of petitioner, Oestreicher Realty, and received from corporations owning and operating real property, constitute partnership income subject to the unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, Oestreicher Realty, filed New York State income tax and unincorporated business tax partnership returns for the years 1959 through 1964. The returns did not include income reported in the individual returns of the partners of Oestreicher Realty from corporations owning and operating certain parcels of real property.

2. The Income Tax Bureau issued statements of audit changes against petitioner, Oestreicher Realty, imposing additional unincorporated business tax for the years 1959 through 1964 upon the grounds that income reported in the individual returns of petitioner's partners from corporations owning and operating parcels of real property represents partnership income subject to the unincorporated business tax. In accordance with the aforesaid statements, it issued notices of deficiency in the total sum of \$27,078.40.

3. Petitioner, Oestreicher Realty, was, during the years in question, a partnership engaged in the business of real estate management. The partnership consisted of two brothers, Leonard and Gerard Oestreicher. Each brother had a 50% interest in the partnership and received a regular income from it.

4. During the years 1959 through 1964, petitioner, Oestreicher Realty, owned stock in several corporations which in turn owned and operated certain parcels of real property. The property included four buildings, located at 520 8th Avenue, 261 West 36th Street, 534 8th Avenue and 444 Madison Avenue. Leonard and Gerard Oestreicher owned 100% of the stock of Oestreicher Properties, Inc., which owned and operated the 520 8th Avenue building. This corporation owned 100% of the stock of Forell Realty Corporation which owned and operated the 261 West 36th Street building, and 100% of Nustoria Realty Corporations, which owned and operated the 534 8th Avenue building. The 444 Madison Avenue building was owned by corporations in which Oestreicher Realty had a substantial interest.

5. During the years in question, petitioner, Oestreicher Realty, received management fees for managing the aforementioned buildings. These fees were divided equally between Leonard and Gerard Oestreicher and reported on their individual returns, and were not reported on the partnership returns of petitioner. Petitioner contends that the management fees were received by the two brothers as compensation for services performed as officers and directors of the corporations. In addition, petitioner contends that the work done by the two brothers consisted of planning and executing major construction and remodeling of the buildings, arranging for financing and mortgages, negotiating with tenants and supervising the maintenance personnel of these buildings. Finally, petitioner contends that the management fees constituted income from the ownership of real estate and is not taxable as unincorporated business income under section 703(e) of the Tax Law.

CONCLUSIONS OF LAW

A. That the contention of petitioner, Oestreicher Realty, that it is exempt from the unincorporated business tax because it managed real property owned by it is not valid. The ownership of 100% of the stock of a corporation does not constitute ownership of real property by the stockholders. A corporation is considered an entity separate and distinct from its stockholders.


B. That the services rendered by Leonard and Gerard Oestreicher during the years 1959 through 1964 as officers of corporations owning and operating parcels of real property were so connected with the activities of the unincorporated business, Oestreicher Realty, as to constitute part of the real estate management business regularly carried on by it.


C. That the management fees received by Leonard and Gerard Oestreicher during the years in question were subject to the unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

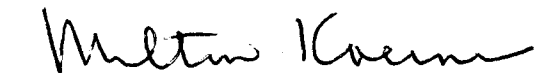
D. That, the petition of Oestreicher Realty is denied, and the notices of deficiency are sustained.

DATED: Albany, New York
July 18, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER