

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OTTO B. SCHOENFELD

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) 1967. :

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

State of New York
County of Albany

JANET MACK , 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 17th day of October , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon OTTO B. SCHOENFELD

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

P.O. Box #1
Ithaca, New York 14850

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

17th day of October , 19 74

Maitha J. J. J. J.

Janet Mack



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 17, 1974

Mr. Otto B. Schoenfeld
P.O. Box #1
Ithaca, New York 14850

Dear Mr. Schoenfeld:

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
L. Robert Leisner
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 :

OTTO B. SCHOENFELD :

DECISION

for Redetermination of a Deficiency :
or for Refund of Unincorporated :
Business Taxes under Article 23 of :
the Tax Law for the Year 1967. :

Petitioner, Otto B. Schoenfeld, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the year 1967.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, 44 Hawley Street, Binghamton, New York, on July 26, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer appeared pro se, and the Income Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Was the sale of taxpayer's farmland, in liquidation of the farm property, subject to unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, Otto B. Schoenfeld, timely filed New York State income tax returns for the year 1967. He did not, however, file an unincorporated business tax return for said year.
2. A Notice of Determination of deficiencies in unincorporated business taxes for the year 1967 was issued on December 29, 1969, against the taxpayer under File No. 74159498.
3. The taxpayer petitioned for redetermination of the deficiencies.

4. Petitioner, Otto B. Schoenfeld, purchased the property known as the Cornell-Taylor Farm on December 11, 1948, with the intention of engaging in farming operations. The property at the time of purchase was operated as a dairy farm, and he continued this activity until June 13, 1958, when the cattle were sold at auction. Thereafter, he engaged in the production of eggs and other farm products until March 1961. He also bought up additional lands adjacent to the main farm. Following the cessation of farming activities in the year 1961, he began to divide up and sell off the real estate used for farming purposes. In 1961, real estate sales totaled \$30,900.00; in 1962, they totaled \$19,673.00; in 1963, they totaled \$30,802.00; in 1964, they totaled \$24,500.00; in 1965, they totaled \$63,500.00; in 1966, they totaled \$88,222.00; and in 1967, they totaled \$223,500.00.

5. On advise of his accountant, petitioner, Otto B. Schoenfeld, did not file an unincorporated business tax return for the year 1967.

CONCLUSIONS OF LAW


A. Farming constitutes the carrying on of an unincorporated business. The income from the sale of business assets during liquidation of the unincorporated business is subject to unincorporated business tax. Matter of Wesnofske, STC Feb. 11, 1971; Matter of Yarker, STC Apr. 5, 1974.

B. The penalty is cancelled and remanded.

C. The deficiency as modified is sustained, and the taxpayer's petition is in all other respects denied.

DATED: Albany, New York
October 17, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER