

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANKLIN W. and MARJORIE YARKER

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) 1961, 1962 and :
1963.

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 11th day of April, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon FRANKLIN W. and
MARJORIE YARKER (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. Franklin W. Yarker
1610 Bahia Drive
Fort Pierce, Florida 33450

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

11th day of April, 1974

James S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANKLIN W. & MARJORIE YARKER

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) 1961, 1962 & :
1963

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 5th day of April , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Franklin W. &
Marjorie Yarker (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. Franklin W. Yarker
825 English 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

5th day of April , 1974





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
FRANKLIN W. & MARJORIE YARKER :

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) 1961, 1962 & :
1963

State of New York
County of Albany

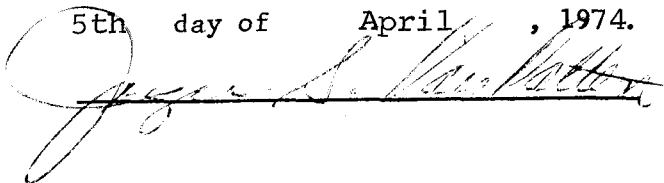
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 5th day of April , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon James R. Sullivan,
Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: James R. Sullivan, Esq.
Lamb, Webster, Walz, Telesca & Donovan
Suite 700, 19 West Main Street
Rochester, New York 14614
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

5th day of April , 1974.





STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
Mario A. Procaccino

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 5, 1974

Mr. & Mrs. Franklin W. Yarker
825 English Road
Rochester, New York 14612

Dear Mr. & Mrs. Yarker:

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

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

~~XXXXXXXXXXXX~~

Edward Rook

Secretary to the
State Tax Commission

cc Petitioner's Representative
Law Bureau

AD 32 (6-73) 250M

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

1607

Mr. & Mrs. Franklin W. Yarker
825 English Road
Rochester, New York 14612

253913



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	DECISION
	:	
Franklin W. and Marjorie Yarker	:	
	:	
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1961, 1962 and 1963	:	

The taxpayers petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1961, 1962 and 1963.

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York, on July 15, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Lamb, Webster, Walz, Telesca, and Donovan, James R. Sullivan, Esq. of Counsel, and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

ISSUE

Was the sale of the taxpayers' farmland after their retirement subject to unincorporated business tax?

FINDINGS OF FACT

1. Petitioners timely filed New York State income tax returns for the years 1961, 1962 and 1963, but did not file unincorporated business tax returns for those years.

2. A Notice of Determination of deficiencies in unincorporated business tax for the years 1961, 1962 and 1963 was issued on September 13, 1965, against the taxpayers under File No. 4974.

3. The taxpayers petitioned for redetermination of the

deficiencies.

4. The taxpayers for many years owned a farm on English Road in the Town of Greece, Monroe County, New York, on which they resided and conducted farming operations. Through 1959, their son, Charles Yarker, was employed by them on the farm.

5. In December, 1959, Franklin Yarker retired from active farming and except for his residence leased the farm to his son, Charles Yarker, for one-half of the net income of the farm. The lease specified the manner of computing net income and provided for payment of expenses and was automatically renewed from year to year.

6. Franklin Yarker did not operate the farm after 1959. In 1960, Charles Yarker operated the entire farm. On July 21, 1961, Franklin Yarker sold 86 acres from the farm to Landorama, Inc. and his son continued to farm the balance of the land. In 1962, Franklin Yarker sold 53 more acres. During this time, Charles Yarker's health deteriorated and he eventually ceased all farm operations, and no farm operations were carried on by anyone since then.

7. Charles Yarker died before June, 1965, and Franklin Yarker has since died.

CONCLUSIONS OF LAW

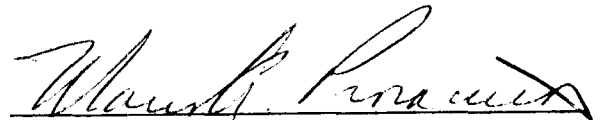
A. Farming constitutes the operation of an unincorporated business. The income from the sale of business assets during liquidation of the unincorporated business is subject to unincorporated business tax. Matter of Wesnofske, STC Feb. 21, 1971; Louis Berry et al., STC Feb. 11, 1971.

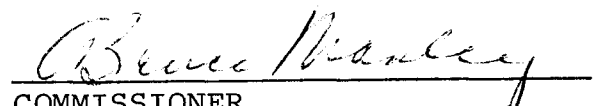
B. The petition is denied and the determination of the deficiency in unincorporated business tax is sustained.

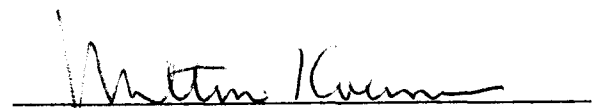
C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
April 5, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER