

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

E. PAUL and ELIZABETH BOYNTON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~xxx~~Period(s) :
1964, 1965, 1966, 1967 and 1968.

State of New York
County of Albany

Catherine Steele, 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 4th day of October, 1976, she served the within
Notice of Decision by (certified) mail upon E. Paul & Elizabeth Boynton

(~~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. E. Paul Boynton
Sunrise Terrace
Worcester, New York 12197

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~of the~~) 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

4th day of October, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

October 4, 1976

TELEPHONE: (518) **457-3850**

Mr. & Mrs. E. Paul Boynton
Sunrise Terrace
Worcester, New York 12197

Dear Mr. & Mrs. Boynton:

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

Please take further notice that pursuant to
Section(**X**) **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: ~~Director's Office~~

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
E. PAUL and ELIZABETH BOYNTON	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Years 1964,	:	
1965, 1966, 1967 and 1968.	:	

Petitioners, E. Paul and Elizabeth Boynton, residing at Sunrise Terrace, Worcester, New York 12197, have filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964, 1965, 1966, 1967 and 1968. (File No. 8-12012183).

A small claims hearing was held July 29, 1976, at 2:00 P.M., at the offices of the State Tax Commission, Room 107, Building #9, State Campus, Albany, New York, before Harry Huebsch, Hearing Officer. The petitioners appeared pro se and for his wife, Elizabeth Boynton. The Income Tax Bureau appeared by Peter Crotty, Esq., (Michael Weinstein, Esq., of counsel).

ISSUES

I. Did the portion of the petitioner's real property, equipment, furniture, fixtures, etc., which he leased with an option to buy, constitute assets connected with his business?

II. Was the rental income received in 1964, 1965, 1966, 1967 and 1968 in connection with the leased property includible in computing net business income for purposes of the New York unincorporated business tax for the tax years 1964 through 1968?

III. Was the gain realized from the sale of such assets subject to New York State unincorporated business tax for the tax year 1968?

FINDINGS OF FACT

1. Petitioners, E. Paul and Elizabeth Boynton, timely filed joint personal income tax and unincorporated business tax returns for the year 1968. A capital gain was reported on the personal income tax return. There was no indication of a gain on the unincorporated business tax return. The Income Tax Bureau held assets sold to be business connected and, therefore, taxable for unincorporated business tax purposes at 100 percent of the gain realized. On August 30, 1971, the Income Tax Bureau issued a Notice of Deficiency to the petitioner, E. Paul Boynton, which reflected the ordinary income treatment of the gain from sale of such assets for unincorporated business tax purposes. The additional unincorporated business tax was \$686.42 plus \$97.79 interest for a total of \$784.21. The Income Tax Bureau also adjusted the capital gains reported on the personal income tax return and issued a separate Notice of Deficiency which was subsequently paid by the petitioners.

2. In 1951, petitioner, E. Paul Boynton, entered into a partnership agreement with his brother who was a veterinarian. They operated a hospital for domestic animals. Petitioner, E. Paul Boynton, groomed the animals and managed the hospital. His brother took care of the professional duties. In 1960, petitioner, E. Paul Boynton, purchased his brother's interest and continued the business with the help of salaried veterinarians. The hospital building was a bungalow type of house, the upper floor of which contained living quarters for the veterinarians, while the ground floor was devoted to the veterinary practice. The basement operating facilities and kennels. There were also several out buildings for kennels and hospital related uses.

3. In 1963, because of difficulties with the New York State Bureau of Professional Ethics, petitioner, E. Paul Boynton, leased approximately one-half of the professional facilities to a veterinarian and confined his business

activities to grooming and boarding animals on the other half of the property. The lease contained an option to buy which was exercised in 1968 by the lessee. The entire building and its contents were transferred to the lessee, as purchaser.

4. The petitioner requested refund of unincorporated business tax for the tax years 1964 through 1968 on the basis that rental income, included in computing New York State unincorporated business tax for such years, should not have been included as such rental income was received in connection with property leased with an option to purchase, which was used by a person in an exempt profession. The petition was received by the Income Tax Bureau on September 24, 1971. The petitioner further indicated that the rental income for the years 1964 through 1968 should not be subject to unincorporated business tax for such years, as the rental income received was part of the real estate lease-option transaction, and the petitioner had no jurisdiction over the portion of the real estate used by the veterinarian.

CONCLUSIONS OF LAW

A. That the claims for refund of New York State unincorporated business tax for the years 1964, 1965, 1966 and 1967 may not be considered as such claims were not timely filed in accordance with the provisions of section 687 of the Tax Law.

B. That the petitioner, E. Paul Boynton, regularly carried on an unincorporated business of grooming and boarding animals, within the meaning and intent of section 703(a) of the Tax Law during the year 1968 up to the time in 1968 when the entire real and other tangible property was sold and that the portion of the property which was leased constituted assets connected with the petitioner's business within the meaning and intent of section 703(e) of the Tax Law.

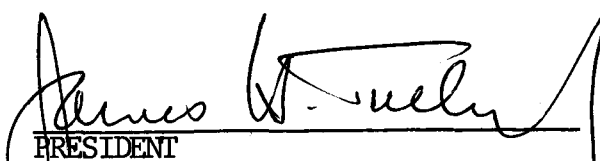
C. That the rental income received in the year 1968, in connection with the lease-option arrangement, constituted income from assets connected with the petitioner's business which was includible in computing net business income for New York State unincorporated business for such years.

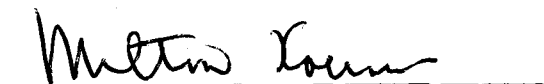
D. That the gain realized from the sale of real and other tangible property in connection with the lease-option transaction is includible in computing unincorporated business gross income for the tax year 1968 within the meaning and intent of section 705(a) of the Tax Law.


E. That the petition of E. Paul and Elizabeth Boynton is denied and the Notice of Deficiency is sustained.

DATED: Albany, New York
October 4, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER