

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY FROEHLICH and  
ELIZABETH FROEHLICH

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 ~~xx~~ 23 of the  
Tax Law for the Year ~~xx~~ 1965.

State of New York  
County of Albany

MARYLOU SAMUELS

, 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 6th day of May, 1976, she served the within

Notice of Decision ~~for Determination~~ by (certified) mail upon Anthony Froehlich and

Elizabeth Froehlich ~~(representative of the)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. and Mrs. Anthony Froehlich  
200 Plainview Road  
Woodbury, New York 11797

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 the)~~  
~~xx~~ 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

6th day of May, 1976

Janet Mack

Marylou Samuels

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY FROEHLICH and  
ELIZABETH FROEHLICH

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 ~~23~~ 23 of the  
Tax Law for the Year(s) 1965.

State of New York  
County of Albany

MARYLOU SAMUELS, 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 6th day of May, 1976, she served the within  
Notice of Decision (or ~~Redetermination~~) by (certified) mail upon Francis B. Froehlich

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

wrapper addressed as follows: Francis B. Froehlich, Esq.  
34 Willis Avenue  
Mineola, New York 11501

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

6th day of

May, 1976.

Janet Mack

Marylou Samuels



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

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

May 6, 1976

Mr. and Mrs. Anthony Freehlich  
200 Plainview Road  
Woodbury, New York 11797

Dear Mr. and Mrs. Freehlich:

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 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,

**PAUL E. COBURN**  
Supervising Tax  
Hearing Officer

Enc.

cc: ~~Parties~~ Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ANTHONY FROEHLICH and	:	
ELIZABETH FROEHLICH	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1965.	:	

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Petitioners, Anthony Froehlich and Elizabeth Froehlich, residing at 200 Plainview Road, Woodbury, New York 11797, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1965. (File No. 48005268.) Petitioners waived a formal hearing on June 25, 1975. The case was submitted to the State Tax Commission for a decision based on information contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Whether the gain on the sale of land by petitioner, Anthony Froehlich, was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Anthony Froehlich and Elizabeth Froehlich, filed a New York State personal income tax return for the year 1965.

2. On November 30, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Anthony Froehlich, imposing New York State unincorporated business tax on the gain, he realized from the installment sale of property upon the ground that such sale was related to his farming activities. A Notice of Deficiency was issued in the sum of \$6,334.40.

3. By contract dated October 21, 1964, petitioners, Anthony Froehlich and Elizabeth Froehlich, agreed to sell approximately one hundred and forty-two (142) acres to two individuals, namely, Donald G. Partrick and Stanley A. Niesloss. This contract, dated October 22, 1964, contained certain contingencies. Subsequently and in April of 1965 the contingencies were waived by the purchasers and the contract became firm. Title closed thereon on December 9, 1965. At the time of closing the contract was assigned by the purchasers to Pinedale Building Corp.

4. The total contract price was \$780,120.00 and was computed at the rate of \$5,500.00 per acre for 141.84 acres. The purchasers and the corporation between contract and closing paid total cash of \$156,024.00. Brokerage paid to the broker on account of the sale

was at the rate of five percent and by agreement was to be paid as the sellers received the monies to be paid on the purchase price. The difference between the down payment on contract and closing and the purchase price was by way of a purchase money mortgage which was in the total amount of \$624,096.00, maturing on December 8, 1970, with interest at the rate of five percent.

5. The premises which constituted the subject matter of this contract were acquired by petitioners, Anthony Froehlich and Elizabeth Froehlich, and held by them as tenants, by the entirety, through various conveyances (five in all), commencing with the 1st day of April, 1949 and the final conveyance being made in February of 1953; except that one of the above-mentioned deeds conveyed the premises described in that deed to petitioner, Anthony Froehlich. With respect to the parcel held solely by petitioner, Anthony Froehlich, that parcel consisted of approximately twenty-five acres of land out of the entire parcel conveyed.

6. A portion of this farm land was not tillable since it was in woodland and also had certain drainage problems. At the time the premises were conveyed a portion of the land, approximately twenty acres, had been utilized by another farmer and a portion, 12.12 acres, was subject to the golden nematode quarantine. The balance of the land was cultivated by petitioner, Anthony Froehlich, in connection with his farming operations. The actual amount of

acreage that was tillable out of the total parcel conveyed was 118.27 acres, less the 12.12 acres subject to quarantine, for a total of 106.15 acres that were actually farmed. Of this total, twenty acres were leased to another farmer so that they were not used by the taxpayer in his farming operations. Only 86.15 acres of the total 141.84 acres sold were used by Anthony Froehlich in his farming operation. The principal crop raised on the premises was potatoes.

7. Anthony Froehlich has been engaged in farming since early youth and has cultivated various farm lands in connection with his own farming operations for upwards of thirty years. He has no other occupation. Elizabeth Froehlich has been a housewife since the date of her marriage to Anthony Froehlich in 1936. She also has no other occupation.

8. The total real estate taxes as assessed by the Town of Huntington for the year 1964/65 amounted to \$9,298.01.

#### CONCLUSIONS OF LAW

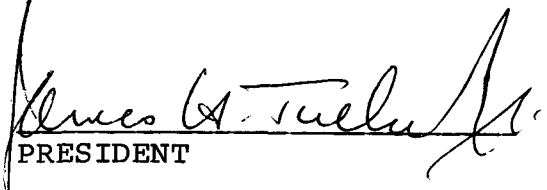
A. That the income received by petitioner, Anthony Froehlich, in the year 1965 from the sale of his farm constituted income from the use of an asset connected with his farming business and not income received solely by reason of holding, leasing or managing real property exempt from imposition of unincorporated business tax in accordance with the meaning and intent of section 703(e) of the Tax Law.

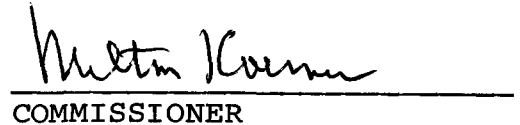
B. That the aforesaid real estate transactions of petitioner, Anthony Froehlich, during the year 1965 constituted the carrying on of an unincorporated business and the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

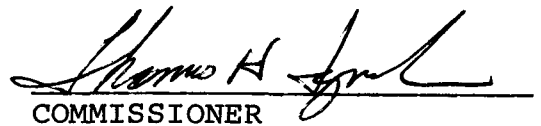
C. That the petition of Anthony Froehlich and Elizabeth Froehlich is denied and the Notice of Deficiency dated November 30, 1970, is sustained.

DATED: Albany, New York  
May 6, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER