

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PINE RIDGE FURNITURE CO.

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(s) 1970. :

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 13th day of May, 1976, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Pine Ridge Furniture
Co. (~~representative of~~) the petitioner in the within

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

wrapper addressed as follows: Pine Ridge Furniture Co.
2320 Genesee Street
Buffalo, New York 14225

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

13th day of May, 1976

Janet Mack

Marylou Samuels

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PINE RIDGE FURNITURE CO.

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) 1970 :

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 13th day of May, 1976, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon David H. Alexander
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: David H. Alexander, Esq.
Gross, Shuman, Laub & David
26th Floor, Main Place Tower
Buffalo, New York 14202
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

13th day of May, 1976.

John T. 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

May 13, 1976

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

Pine Ridge Furniture Co.
2320 Genesee Street
Buffalo, New York 14225

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.

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 B. COBURN
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PINE RIDGE FURNITURE CO.	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1970	:	

Petitioner, Pine Ridge Furniture Co., 2320 Genesee Street, Buffalo, New York 14225, petitioned for a redetermination of deficiencies in unincorporated business tax under Article 23 of the Tax Law for the year 1970.

A formal hearing was held at the offices of the State Tax Commission, Buffalo, New York, on June 10, 1975, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by David H. Alexander, Esq. and the Income Tax Bureau was represented by Saul Heckelman, Esq. (Alexander Weiss, Esq., of counsel).

ISSUES

1. Was the cost basis of real property correctly reported by the taxpayer?
2. Was petitioner subject to unincorporated business tax on the gain on the sale of real property owned by Joseph H. Baier and James J. Baier?

FINDINGS OF FACT

1. Petitioner, Pine Ridge Furniture Co., timely filed New York State unincorporated business tax returns for the year 1970.

2. A Notice of Determination of deficiencies in unincorporated business tax for the year 1970 was issued on October 29, 1973, against the taxpayer under File No. P/S 3568.

3. The taxpayer petitioned for redetermination of the deficiencies and for a refund.

4. Joseph H. Baier and James J. Baier purchased two parcels of real property on Seneca Street in West Seneca, New York, at 4099 Seneca Street and 4085 Seneca Street, as follows:

(a) On October 31, 1956, Joseph H. Baier, James J. Baier, and Richard A. Marfurt, as tenants in common, purchased the real property known as 4099 Seneca Street. This property consists of land and a two-story building. The first floor of the building consisted of a mercantile show room and the second floor consisted of two rental apartments. The purchase price for the 4099 Seneca Street property was \$30,000. Richard A. Marfurt contributed \$5,000. toward the purchase price and Joseph H. Baier and James J. Baier each contributed \$2,500. or a total of \$5,000. towards the purchase price of the property. The balance of the purchase price was provided by the purchasers obtaining a \$20,000. mortgage from the Bank of Blasdell, New York. On December 6, 1957, Richard A. Marfurt sold his interest in the 4099 Seneca Street property to Joseph H. Baier and James J. Baier for \$7,500.

(b) Joseph H. Baier and James J. Baier (as tenants in common), purchased the property known as 4085 Seneca Street, which is adjacent to the 4099 Seneca Street property, on July 12, 1964. The property consisted of land and a two-family residence.

5. The petitioners, Joseph H. Baier and James J. Baier, conducted their retail furniture business known as Pine Ridge Furniture Company at 2320 Genesee Street, Cheektowaga, New York. That business was conducted at that site continually since the inception of the partnership in 1954 to present date. The Genesee Street furniture business (Pine Ridge Furniture Company, now known as Pine Ridge Furniture Company, Inc.) is located at least seven to ten miles away from the real property located at 4099 and 4085 Seneca Street, in West Seneca, New York.

6. The unincorporated business tax in this matter is assessed against the net revenues generated from the Pine Ridge Furniture Company retail furniture business partnership located in Cheektowaga, New York. It is the New York State Income Tax Bureau's position that the real property, owned individually by the petitioners and located at 4099 and 4085 Seneca Street in West Seneca, New York, constitutes property of Pine Ridge Furniture Company (located in Cheektowaga, New York) and, therefore, any gain on its sale is subject to the unincorporated business tax. The petitioners, however, contend that the property is not partnership property and that the unincorporated business tax was improperly assessed upon the gain realized on the sale of the property. In addition, the petitioners contend that the cost basis for 4099 Seneca Street was incorrect, and that a higher value, reflecting the total cost of that property should have been used to determine the gain realized upon the sale. The assessment on the sale of the property was based on a schedule of costs from schedule D of a 1040 return filed with the United States government. The evidence from original deeds and statements of closing show that the original costs of

\$26,778.49 on the schedule D were not correct and taxpayer's original cost basis was actually \$32,500. and gain for tax purposes would be reduced by \$5,721.51.

4099 Seneca Street

The operating of the property at 4099 Seneca Street by the petitioners was totally unrelated to the business conducted at their furniture store on Genesee Street. The top floor of this two floor structure consisted of two rental apartments and the petitioners received rental income from those apartments during the entire period of their ownership. The first floor of that structure was occupied by a corporation known as Town Hall Furniture & Appliance, Inc. This corporation had no direct link with Pine Ridge Furniture Company or with it's successor, Pine Ridge Furniture Company, Inc. The only connection between the two is the fact that the petitioners were the sole owners of Pine Ridge Furniture Company and Pine Ridge Furniture Company, Inc. and had made an equity investment as part owners in Town Hall Furniture & Appliance, Inc. During the entire time that the petitioners owned 4099 Seneca Street, up until the date that it was sold, Pine Ridge Furniture Company never conducted any business at 4099 Seneca Street and specifically, never used the property as an annex warehouse or in any other related activity.

The petitioners in this matter acquired title to 4085 and 4099 Seneca Street in their individual names. At no time during the period of their ownership was title ever transferred to Pine Ridge Furniture Company. When the properties were sold by the petitioners on January 21, 1970, the properties were transferred to Town Hall Furniture & Appliance, Inc. from Joseph H. Baier and James J. Baier as individuals.

4085 Seneca Street

The property at 4085 Seneca Street, in West Seneca, during the period of petitioners' ownership, was a two-family residence. The petitioners received during the period of their ownership, rental income from families who occupied that building. At no time was that structure ever used as a warehouse, annex or any part involved in the furniture business which your petitioners conducted at 2320 Genesee Street (i.e. Pine Ridge Furniture Company).

The unincorporated business tax was assessed upon the sale of these two properties due to the fact that for the calendar years 1963 through 1970, the income and expenses of these two properties was mistakenly included in the partnership tax return (for the period 1956 through 1962 the income and expenses of these properties were included in the individual tax returns of the petitioners). The mere fact that this technical mistake was made does not change the true nature and use of these properties. The income produced by the two Seneca Street properties was in excess of the allocated expenses; thus additional rental income became subject to the unincorporated business tax for the calendar years 1963 through 1970. This fact indicates the inadvertent nature of the inclusion of these properties on the partnership tax returns. The fact that extra unincorporated business tax was paid because of the inclusion of these properties on the partnership books shows that these properties were not included for the purpose of sheltering or shielding any income actually produced by the partnership business, i.e. from the net revenues produced from the furniture store on Genesee Street.

The purchase, ownership and sale of 4085 and 4099 Seneca Street in West Seneca by Joseph H. Baier and James H. Baier represented a personal investment by them totally unrelated to the business they conducted at their

furniture store known as Pine Ridge Furniture Company and located at 2320 Genesee Street in Cheektowaga.

CONCLUSIONS OF LAW

A. New York Tax Law §701 (a) imposes the unincorporated business tax upon "unincorporated business taxable income" of every unincorporated business carried on within this state. An "unincorporated business" is defined as "any trade, business, or occupation conducted, engaged in... by an individual or unincorporated entity, including a partnership..." (see New York State Tax Law §703 (a)). The mere fact, however, that individuals purchase and sell property for their own account, does not mean that such individuals are automatically conducting an "unincorporated business" (See New York State Tax Law §703 (d) - Purchase and Sale for own account).

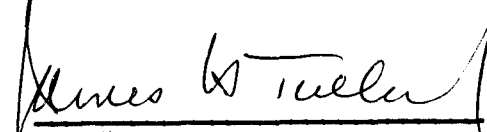
The purchase, ownership and sale of 4085 and 4099 Seneca Street, in West Seneca, by the petitioners, was a personal investment by the petitioners unrelated to the business which they conducted at 2320 Genesee Street, in Cheektowaga, under the name of Pine Ridge Furniture Company. Any gain realized upon the sale of those two Seneca Street properties was not subject to the unincorporated business tax, and there is no deficiency in unincorporated business tax.

B. The taxpayers shall be paid a refund of any unincorporated business tax paid on account of the sale of 4085 and 4099 Seneca Street.

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

DATED: Albany, New York
May 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER