

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP and MARY POLLACK

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) ~~on Period(s)~~ :
1969, 1970 and 1971.

State of New York
County of Albany

Jean Wager, 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 August, 1976, she served the within
Notice of Decision by (certified) mail upon Philip and
Mary Pollack (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Philip and Mary Pollack
142-21 26th Avenue
Flushing, New York 11354

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

5th day of August, 1976.

Janet Mack

Jean Wager

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP and MARY POLLACK

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) ~~1969, 1970 and 1971~~ :
1969, 1970 and 1971.

State of New York
County of Albany

Jean Wager , 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 August , 1976 , she served the within
Notice of Decision by (certified) mail upon Nathan Freeberg
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Nathan Freeberg
72 Seaman Ave.
New York, New York 10034
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

5th day of August , 1976.

Janet Mack

Jean Wager



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

August 5, 1976

TELEPHONE: (518) 457-3850

Philip and Mary Pollack
142-21 26th Avenue
Flushing, New York 11354

Dear Mr. & Mrs. Pollack:

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

Please take further notice that pursuant to
Section ~~(a)~~ **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,

[Signature]
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	:	
PHILIP and MARY POLLACK	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1969, 1970 and 1971.	:	
	:	

Philip and Mary Pollack, 142-21 26th Avenue, Flushing, New York 11354, filed a petition under sections 689 and 720 of the Tax Law for a redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the years 1969, 1970 and 1971. Said deficiency was asserted by notice issued March 26, 1973, under File No. 1-76011793 and is in the amount of \$1,924.54 plus interest of \$204.17 for a total of \$2,128.71.

A hearing was duly held on April 11, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Nathan Freeberg, P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by James A. Scott, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the receipts from the sale of real property are to be considered as business income.

FINDINGS OF FACT

1. Prior to 1960, Philip Pollack, petitioner herein, and his father, Abe Pollack, were equal partners in a retail furniture, linoleum and rug store located at 429-31 2nd Avenue, New York City. This consisted of two one-story brick buildings with a basement. Philip Pollack and his father, Abe Pollack, owned the real estate equally.

2(a). Abe Pollack died on March 30, 1960.

2(b). Under his will Abe Pollack gave his own interest in the stock of merchandise, the accounts receivable and truck owned by the partnership to Philip Pollack, petitioner herein, and Philip Pollack assumed the obligations of the business.

2(c). By separate bequest, Abe Pollack gave to his widow, Dora Pollack, a sum equal to one-half of his interest in the real property located at 429-31 2nd Avenue, New York City. The decedent's share of the real estate became part of the residue of the estate which was left equally to the five children including Philip Pollack.

2(d). The executors of the estate were designated to be Philip Pollack and a daughter, Ida Walter.

3. Philip Pollack conducted the retail business at the 2nd Avenue location (as a sole proprietor) from 1960 to 1969. He paid the upkeep of the premises and made the mortgage payments. The cellar of one of the buildings was rented out to a tenant for \$300 a year.

4. The estate of Abe Pollack did not file any fiduciary income tax returns. Mr. Pollack considered the only income of the estate to be \$300 a year. The estate stayed open until the bequest to the widow was paid in 1971.

5. The retail business accounted for its income for Federal tax purposes on a "schedule C" filed jointly by Philip and Mary Pollack. It filed an unincorporated business tax return under the name of Philip and Mary Pollack. The retail business was closed down in June, 1969. Mr. Philip Pollack was 69 years old at that time and he retired.

6. On July 29, 1969, the real estate at 429-31 2nd Avenue was sold to a developer who desired to demolish the buildings and construct an apartment house. The closing statement is addressed only to Mr. Philip Pollack. The sale price was \$115,000.00 and the

mortgage at time of sale was \$22,100.21. Mr. Pollack took back a second mortgage of \$62,900.00 and received cash of about \$25,000.00. Mr. Pollack received \$30,000.00 in each year 1969, 1970 and 1971.

7(a). Petitioners reported the sale of the buildings here in question on their 1969 unincorporated business tax return. They took into income, however, only one-half of the gain recognized for the year. They filed no returns for 1970 and 1971.

7(b). The deficiency notice in issue adds back to business income one-half of the gain for 1969. It also includes as business income for 1970 and 1971, the full amount of the gains from the installments received in those years.

8. Mr. Philip Pollack died on October 21, 1974.

CONCLUSIONS OF LAW

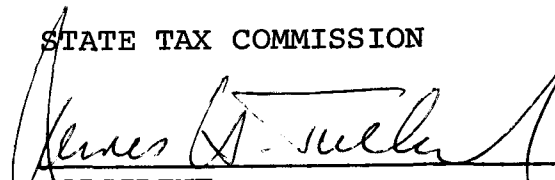
It is clear enough, bearing in mind that the parties to the above transactions have died, that the real estate here in question was never regarded as part of the retail business. The real estate was owned by an estate which was not itself a partner in the retail business operated thereon. The retail business realized no income from the sale of the real estate. The estate would be entitled to the exemption for managing real estate found in section 703(e) of the Tax Law.

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The deficiency is erroneous in its entirety and is cancelled.

DATED: Albany, New York
August 5, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER