

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RAYMOND and EDNA TEMPLE

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business  
Taxes under Article (x) 23 of the  
Tax Law for the Year (x) 1967.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

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 12th day of April, 19 76 she served the within

Notice of Decision (or Determination) by (certified) mail upon Raymond and Edna Temple

(representative of) the petitioner in the within

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

wrapper addressed as follows:

Mr. and Mrs. Raymond Temple  
410 North Midler Avenue  
Syracuse, New York 13206

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

12th day of

April, 19 76

Janet Mack

Marylou Samuels

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RAYMOND and EDNA TEMPLE

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business  
Taxes under Article (x) 23 of the  
Tax Law for the Year (x) 1967.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

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 12th day of April, 1976, she served the within  
Notice of Decision, ~~(or Determination)~~ by (certified) mail upon Frank A. Pompo

(representative of) the petitioner in the within

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

wrapper addressed as follows:

Frank A. Pompo, CPA  
c/o Homik & Pompo  
722 University Building  
Syracuse, New York

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

12th day of April, 1976

Janet Mack

Marylou Samuels



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

(518) 457-3850

Dated: Albany, New York  
April 12, 1976

Mr. and Mrs. Raymond Temple  
410 North Midler Avenue  
Syracuse, New York 13206

Dear Mr. and Mrs. Temple:

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.

Any 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.  
These will be referred to the proper party for  
reply.

Very truly yours,

  
**Paul B. Coburn**  
**SUPERVISING TAX**  
**HEARING OFFICER**

Enc.

cc: Petitioner's Representative  
Law Bureau

TA-1.12 (12/75)

STATE OF NEW YORK

STATE TAX COMMISSION

---

|  |   |          |
|--|---|----------|
| In the Matter of the Petition            | : |          |
| of                                       | : |          |
| RAYMOND and EDNA TEMPLE                  | : |          |
| for Redetermination of a Deficiency      | : | DECISION |
| or for Refund of Unincorporated Business | : |          |
| Tax under Article 23 of the Tax Law for  | : |          |
| the Year 1967.                           | : |          |

---

Petitioners, Raymond and Edna Temple, 410 North Midler Avenue, Syracuse, New York 13206, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the year 1967.

A formal hearing was held at the offices of the State Tax Commission, Syracuse, New York, on June 14, 1973, before L. Robert Leisner, Hearing Officer. The taxpayers were represented by Frank A. Pompo, C.P.A., and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUE

Was the sale of three acres of vacant land near petitioners' residence and dairy store from 18 acres of vacant land subject to unincorporated business tax?

FINDINGS OF FACT

1. Petitioners, Raymond and Edna Temple, timely filed New York State unincorporated business tax returns for the year 1967.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the year 1967 was issued on November 30, 1967, against the taxpayers under File No. 8-12653426.

3. The taxpayers petitioned for redetermination of the deficiencies.

4. In 1937, shortly after their marriage, the taxpayers received, by a gift deed, about two acres of land from Raymond Temple's father. During 1939, the Temples built a pasteurizing plant adjacent to their residence. This property was taken in 1942 by the Government.

5. The Temples then purchased the property in question, 18 acres, and erected a combined personal residence and dairy pasturizing plant on it. This building occupied only a very small portion of the 18 acres of land. They received an annual tax bill and deducted one-half for business and one-half for personal deductions.

6. Later, a building was built for rental to a tractor business. The small portion of property occupied by the dairy

pasteurizing building and the tractor building were surrounded by a semi-paved area and clearly separately from the vacant grass acreage.

7. During their years of ownership, the taxpayers deducted only one-half of the taxes as business expense for the dairy pasteurizing building and the tractor building on their personal and their unincorporated business tax returns.

8. The taxpayers did not claim taxes for the vacant land as business deductions on either their business or unincorporated business tax returns, during the years preceding.

9. The vacant acreage was never used for farming, grazing or business. The vacant land was held by the taxpayers personally.

10. Some of the acreage was used for sandlot baseball or recreation.

11. In 1967, three acres of the vacant grass acreage was sold to the Genuine Parts Co.

12. The vacant land was not used as part of their dairy or tractor building and was held by the petitioners personally for investment purposes. The other items of the deficiency are not in dispute.

#### CONCLUSIONS OF LAW

A. The taxpayers held the vacant land personally for their own account. The taxpayers never claimed real property taxes on

the vacant land as a business deduction. Individuals holding real property for their own account are not deemed engaged in an unincorporated business, sections 703(d) and 703(e) of the Tax Law; In re: Sam Muzeka, S.T.C. decision, February 7, 1974. The sale of three acres of vacant land was not subject to unincorporated business tax and taxpayers' petition is sustained in that regard.

B. The tax shall accordingly be recomputed. In all other respects the deficiencies in unincorporated business tax and personal income tax are fully sustained.

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

DATED: Albany, New York  
April 12, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER