

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK L. MARSHALL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~xx-xxxxxx~~ :  
1970 & 1971.

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of March, 1977, ~~she~~ he served the within  
Notice of Decision by (certified) mail upon Frederick L. Marshall

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Frederick L. Marshall  
308 Court Street  
Penn Yan, New York 14527

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)~~  
~~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

24th day of March, 19 77

Bruce Batchelor

Frederick L. Marshall

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FREDERICK L. MARSHALL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1970 & 1971.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of March , 1977, he served the within  
Notice of Decision by (certified) mail upon Daniel R. Taylor, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Daniel R. Taylor, Esq.  
Taylor and Taylor  
116 Main Street  
Penn Yan, New York 14527

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

24th day of March , 1977.

Bruce Batchelor

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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

March 24, 1977

TELEPHONE: (518) **457-1723**

Mr. Frederick L. Marshall  
308 Court Street  
Penn Yan, New York 14527

Dear Mr. Marshall:

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,

*Frank J. Puccia*  
**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
FREDERICK L. MARSHALL  
for Redetermination of a Deficiency or  
for Refund of Unincorporated Business Taxes  
under Article 23 of the Tax Law for the  
Years 1970 and 1971.

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DECISION

Petitioner, Frederick L. Marshall, residing at 308 Court Street, Penn Yan, New York 14527, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1970 and 1971. (File No. 1-88077697).

A small claims hearing was held August 10, 1976 at 2:45 P.M. at the offices of the State Tax Commission, 1 Marine Midland Plaza, Rochester, New York, before Harry Huebsch, Hearing Officer. The petitioner appeared with his representative, Daniel R. Taylor, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Was the gain received by petitioner, Frederick L. Marshall, during the years 1970 and 1971, from the sale of real property business connected, and therefore subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Frederick L. Marshall, filed an unincorporated business tax return for 1970. He did not include the gain derived from the installment sale of land and a building which had been used in his business. Also, petitioner Frederick L. Marshall, failed to include interest income earned on money held in escrow prior to closing. Petitioner, Frederick L. Marshall, did not file an unincorporated business tax return for 1971. The Income Tax Bureau held that the gain on the sale of the property and the interest income were business connected and therefore subject to unincorporated business tax. A Notice of Deficiency dated July 30, 1973 was issued for 1970 and 1971 in the amount of \$1,169.99 unincorporated business tax due, plus \$282.09 penalty, plus \$105.33 interest, for a total sum of \$1,557.41.

2. Petitioner, Frederick L. Marshall, was engaged in the grocery business. He leased the premises which the business occupied. The lease contained an option to buy the property for \$50,000.00. On December 30, 1969, petitioner exercised his option and purchased the property. On that same date he executed an agreement to sell the property to Mobil Oil Corporation for \$118,500.00. The closing date of the sale to Mobil Oil Corporation was July 31, 1970. The business was in operation and in the process of liquidation of merchandise during 1970.

3. Petitioner, Frederick L. Marshall, did not submit any evidence regarding the interest income earned on the escrow account.

He contended that he took advantage of an opportunity to make a profit and that the transaction had nothing to do with his grocery business. That the sale of the property was not the result of liquidation of the business but rather that he purchased the property for resale for his own account.

CONCLUSIONS OF LAW

A. That the income derived from the sale of property in 1970 and 1971 constituted income from the use of an asset connected with his grocery business and was 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 gain from the aforesaid real estate transaction and the interest income earned from the escrow account prior to the sale, constituted income derived from the carrying on of an unincorporated business and such income 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 Frederick L. Marshall is denied and the Notice of Deficiency dated July 30, 1973 is sustained.

DATED: Albany, New York  
March 24, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER