

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CLARENCE MOORE and MARCIA W. MOORE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) ~~1972 & 1973~~
1972 & 1973

State of New York
County of Albany

Marsina Donnini, 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 26th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Clarence Moore & Marcia W.
Moore ~~Xrepresentative of~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Clarence Moore
484 Whittier Road
Spencerport, 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 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

26th day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

August 26, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. & Mrs. Clarence Moore
484 Whittier Road
Spencerport, New York

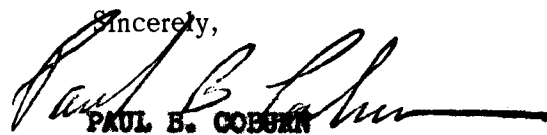
Dear Mr. & Mrs. Moore:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690 & 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


PAUL B. COBURN
Supervising Tax
Hearing Officer

~~XXXX Petitioner's Representative XXXX~~

Taxing Bureau's Representative

STATE TAX COMMISSION

for Redetermination of a Deficiency : DECISION
or for Refund of Personal Income and
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law :
for the Years 1972 and 1973. :

Petitioners, Clarence Moore and Marcia W. Moore, residing at 484 Whittier Road, Spencerport, New York, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1972 and 1973. (File Nos. 10520 and 10521).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on November 15, 1976 at 3:00 P.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUE

Whether the gain on the sale of farmland by petitioners, Clarence Moore and Marcia W. Moore, was subject to unincorporated business tax.

FINDINGS OF FACT

1. On November 24, 1975, as the result of an audit, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Clarence Moore and Marcia W. Moore, imposing additional income tax for the years 1972 and 1973. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$2,889.54, plus interest of \$550.06, for a total of \$3,449.60. Petitioners are not contesting the assessment for additional personal income tax.

2. On November 24, 1975, as the result of an audit, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Clarence Moore, imposing an unincorporated business tax on the gain from the sale of farm land in 1972 and 1973. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$3,870.85, plus interest of \$730.77, for a total of \$4,601.62.

3. For nearly twenty-five years, petitioner, Clarence Moore, was a dairy farmer in the Village of Hilton, Town of Greece, County of Monroe. He had 100 head of dairy cattle. In 1963, following a heart attack, he sold his stock and retired. He had participated in the wheat and feed grain program, a Federal program for setting aside acreage during periods when there was a surplus of feed grain and wheat. In 1972, petitioner was paid

\$503.00 by the Monroe County Agricultural Stabilization and Conservation Service for setting aside 10.2 acres and not planting grains on them, a practice which he had followed in past years. In 1973, he received \$202.04 for setting aside 1.6 acres in the same way. Petitioners resided on this farm until 1972. In 1972, a part of this farm was sold. The section sold was mostly a swampy area separated from the rest of the farm by a creek.

4. In 1973, petitioners, Clarence Moore and Marcia W. Moore, moved to their Spencerport, Town of Ogden, County of Monroe, New York property which they had purchased in 1945. They subdivided a portion of this sixty-four acre tract and sold lots therefrom. Petitioners did not farm this acreage and received no Federal allotments for it. This tract was twenty miles from their Hilton farm.

5. Petitioners, Clarence Moore and Marcia W. Moore, had \$503.00 farm income in 1972 and \$222.00 in 1973, from this Hilton farm at 118 Payne Beach Road, pursuant to Internal Revenue Service Form 4835 "Farm Rental Income and Expenses."

CONCLUSIONS OF LAW

A. That farming constitutes the carrying on of an unincorporated business. Gain from the sale of farm assets is subject to unincorporated business tax. (Section 703 Tax Law, Matter of Yarker State Tax Commission, April 5, 1974).

B. That petitioners, Clarence Moore and Marcia W. Moore, participated in the Federal Wheat and Feed Grain Program for many years and in 1972 and 1973 received monies for setting aside acreage on their farm in the Village of Hilton, Town of Greece, County of Monroe. Therefore, these monies were items of income from the business of farming in accordance with the meaning and intent of section 705(a) of the Tax Law, and any gain from the sale of a portion of this farm land was subject to unincorporated business tax according to the meaning and intent of section 703(a) of the Tax Law.

C. That petitioners, Clarence Moore and Marcia W. Moore, did not receive any monies from any business in 1972 and 1973 with respect to the tract of land from which they sold lots in the Village of Spencerport, Town of Ogden, County of Monroe, Therefore, any gain from the sale of this tract of land was not subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) and (e) of the Tax Law.

D. That the petition of Clarence Moore and Marcia W. Moore is granted to the extent that the unincorporated business tax for 1972 and 1973 be recomputed as per Conclusion of Law "B", supra, together with such interest as is legally due; that the Income Tax Bureau is hereby directed to accordingly modify the

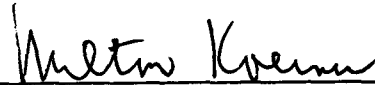
Notice of Deficiency issued November 24, 1975 against Clarence Moore, as well as the Notice of Deficiency issued November 24, 1975 against Clarence Moore and Marcia W. Moore; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER