

## STATE TAX COMMISSION

## DECISION

Petitioners, Nicholas Plisko and Meta Plisko, South Street, R.R. #1, Manorville, New York 11949, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1971. (File No. 14608).

Petitioners, Helen Plisko, individually and the Estate of Walter Plisko (Helen Plisko, Administratrix), South Street, R.R. #1, Manorville, New York 11949, filed a petition for redetermination of

a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1971. (File No. 14609).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1976 at 9:30 A.M. The petitioners appeared by Russell O. Lange, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether gain on the sale of land owned by petitioners, Nicholas Plisko and Walter Plisko, as tenants in common, was subject to unincorporated business tax in the year 1971.

#### FINDINGS OF FACT

1. Petitioners, Nicholas Plisko and Meta Plisko, filed an amended New York State resident income tax return for 1971. They listed income of \$60,499.84 from the sale of capital assets. They did not file an unincorporated business tax return for 1971.

2. Walter Plisko and Helen Plisko filed an amended New York State resident income tax return for the year 1971. They listed \$67,283.47 as income from the sale of capital assets. They did not file an unincorporated business tax return for the year 1971.

3. The Income Tax Bureau did not put into evidence any assessment of unincorporated business tax against petitioners, Nicholas Plisko and Meta Plisko. However, the Income Tax Bureau

did put into evidence an assessment issued against petitioners on January 26, 1976 imposing minimum tax for the year 1971 based on the sale of a tax preference item and this was conceded by petitioner at the hearing.

4. On March 29, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, the Estate of Walter Plisko (Helen Plisko, Administratrix) and Helen Plisko, individually, imposing additional income tax and unincorporated business tax for the year 1971, upon the grounds that the sale of property was a tax preference item subject to minimum income tax and the gain and interest on installments of the sale or exchange of business assets is subject to unincorporated business tax. The assessment consisted of \$6,057.26, plus penalty and interest and accordingly a Notice of Deficiency was issued totalling \$9,120.44. The minimum income tax issue was conceded by petitioners at the hearing.

5. The two brothers, Nicholas Plisko and Walter Plisko, operated a joint farming business on two pieces of property separated by a highway and owned individually by each. They owned the piece of land in issue as tenants in common and this was partially contiguous to the land owned by Walter Plisko.

6. The petitioners, Nicholas Plisko, Meta Plisko, the Estate of Walter Plisko (Helen Plisko, Administratrix) and Helen Plisko, individually, offered no documentary or other substantial evidence that the land in issue was not used in their unincorporated business of farming.

CONCLUSIONS OF LAW

A. That the land in issue owned by petitioners was used in connection with their unincorporated business of farming and, therefore, the gain on the sale of the land is subject to the unincorporated business tax.

B. That, however, since no Notice of Deficiency imposing unincorporated business tax was offered in evidence against Nicholas Plisko and Meta Plisko, therefore, their gain on the sale of the land cannot in this proceeding be held to be subject to the unincorporated business tax.

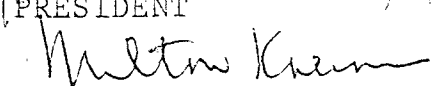
C. That the petition of Nicholas Plisko and Meta Plisko is granted to the extent indicated in Conclusion of Law "B", supra, and that the Notice of Deficiency issued January 26, 1976 relating to personal income tax only is sustained.

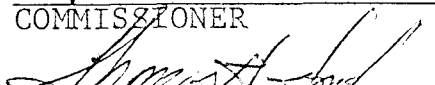
D. That the petition of the Estate of Walter Plisko (Helen Plisko, Administratrix) and Helen Plisko, individually, is denied and the Notice of Deficiency issued March 29, 1976 is sustained.

DATED: Albany, New York  
August 16, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER