

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BENJAMIN HOROWITZ and ROSE HOROWITZ:

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Unincorporated Business** :
Taxes under Article ~~(8)~~ 23 of the :
Tax Law for the Year ~~(8)xxx Period(x)~~ 1972.:

State of New York
County of Albany

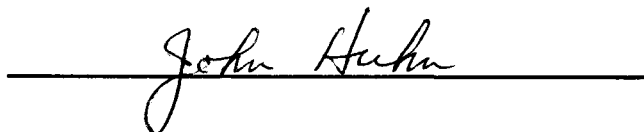
John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of March, 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Joseph Lapatin
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph Lapatin, Esq.
Lapatin Lewis Green Kitzes & Blatteis, P.C.
475 Fifth Avenue
New York, New York 10017
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

22nd day of March, 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BENJAMIN HOROWITZ and ROSE HOROWITZ

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 ~~(sixty six)~~ 1972. :

State of New York
County of Albany

John Huhn , 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 22nd day of March , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Benjamin & Rose
Horowitz ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Benjamin Horowitz
20335 West Country Club Drive
Miami, Florida 33180

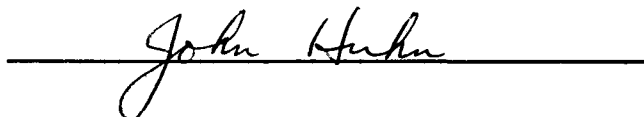
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

22nd day of March , 1978.







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

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

March 22, 1978

**Mr. & Mrs. Benjamin Horowitz
20335 West Country Club Drive
Miami, Florida 33180**

Dear Mr. & Mrs. Horowitz:

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 **(a) 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,

**Aloysius J. Hendza
Assistant Director**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BENJAMIN HOROWITZ and ROSE HOROWITZ	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1972.	:	

Petitioners, Benjamin Horowitz and Rose Horowitz, residing at 20335 West Country Club Drive, Miami, Florida 33180, 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 1972 (File No. 14987).

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 August 23, 1977 at 10:45 A.M. Petitioners appeared by Joseph Lapatin, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Cosgrove, Esq., of counsel).

ISSUE

Whether the income which petitioners derived from gains attributable to the installment sale of real estate (comprising

a bungalow colony) and the interest therefrom, constituted income subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Benjamin Horowitz and Rose Horowitz, timely filed a New York State combined income tax return for 1972, but did not file an unincorporated business tax return for said year.

2. On February 24, 1976, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners on the grounds that the capital gain and interest thereon, derived from petitioners' installment sale of real estate (comprising a bungalow colony) was subject to unincorporated business tax. Other adjustments were made by the Income Tax Bureau in the aforesaid Statement which are not being contested by petitioners and which are not at issue. Accordingly, the Income Tax Bureau issued a Notice of Deficiency on February 24, 1976 against the petitioners in the amount of \$4,364.34, plus \$937.11 in interest, for a total due of \$5,301.45.

3. Prior to 1972, petitioners operated a bungalow colony known as Wurtsboro Gardens in Wurtsboro, New York. They rented bungalows and apartments to vacationers. The rates charged for the rental of bungalows depended solely on their size and location, whereas the rates charged for the rental of apartments depended solely on their size and whether or not the bathroom facilities were private.

4. For the convenience and enjoyment of its guests, Wurtsboro Gardens had two casinos, a nightclub, free cocktail parties weekly, a free day camp, feature movies, Broadway shows, and an orchestra. It also provided the following facilities for its guests: a golf putting-course, a basketball court, two championship handball courts, two steel pools, regulation tennis courts, a baseball field and a kiddie village for pre-school children.

5. Although the above-mentioned facilities maintained by petitioners at Wurtsboro Gardens were an integral part of the real estate comprising the bungalow colony, petitioners failed to submit evidence showing that the operation of these facilities was merely incidental to the rental of bungalows and apartments. Neither did petitioners show that their activities constituted the holding, leasing or managing of real property.

6. The bungalows and apartments at Wurtsboro Gardens were offered for rental to the general public. Petitioners failed to submit evidence showing the length of time spent by vacationing guests at such accommodations.

CONCLUSIONS OF LAW

A. That petitioners' operation of the facilities at a bungalow colony, together with the rental of bungalows and apartments, is deemed to have constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a)

of the Tax Law, since they failed to sustain the burden of proof necessary to show that:

1. the operation of the facilities at Wurtsboro Gardens was merely incidental to the rental of bungalows and apartments;

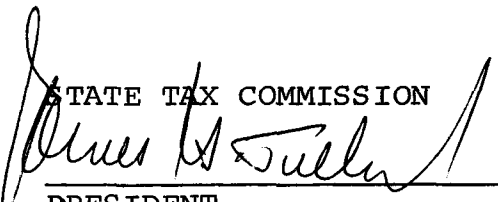
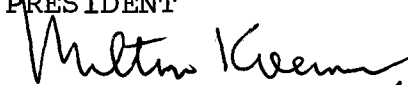
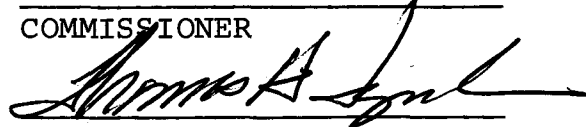
2. the operation, combined with the rentals open to the general public, constituted the mere holding, leasing or managing of real property within the meaning and intent of section 703(e) of the Tax Law; and

3. the length of time spent by a guest at a bungalow colony was for other than a short duration.

B. That the real property (comprising a bungalow colony) constituted property employed in petitioners' business within the meaning and intent of section 705(a) of the Tax Law; therefore, the gain and interest derived from the installment sale thereof is subject to unincorporated business tax.

C. That the petition of Benjamin Horowitz and Rose Horowitz is denied and the Notice of Deficiency issued February 24, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
March 22, 1978


STATE TAX COMMISSION
PRESIDENT

COMMISSIONER

COMMISSIONER