

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Melville Industrial Associates :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Unincorporated Business Tax :  
under Article 23 of the Tax Law  
for the Years 1964, 1965. :

State of New York  
County of Albany

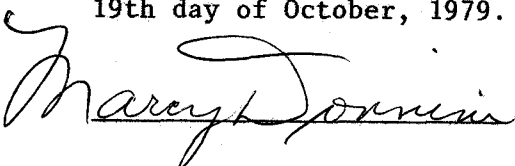
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Herbert Granoff the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

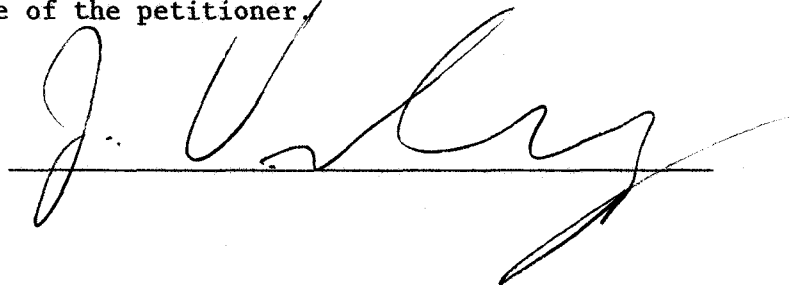
Mr. Herbert Granoff  
8 Wilshire Dr.  
Great Neck, NY 11020

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  
19th day of October, 1979.

  
Mary J. Torrey

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Melville Industrial Associates :

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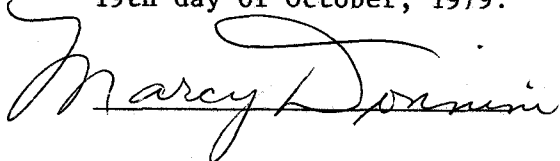
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Melville Industrial Associates, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

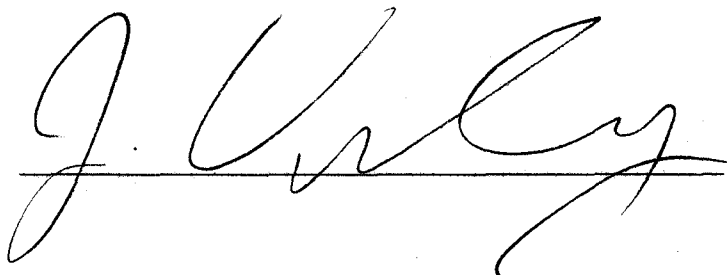
Melville Industrial Associates  
425 Broad Hollow Rd.  
Farmingdale, NY

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
19th day of October, 1979.

  
Marcy D. Dorman

  
Jay Vredenburg

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

October 19, 1979

Melville Industrial Associates  
425 Broad Hollow Rd.  
Farmingdale, NY

Gentlemen:

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) 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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Herbert Granoff  
8 Wilshire Dr.  
Great Neck, NY 11020  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
MELVILLE INDUSTRIAL ASSOCIATES  
for Redetermination of a Deficiency or  
for Refund of Unincorporated Business Tax :  
under Article 23 of the Tax Law for the  
Years 1964 and 1965. :

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DECISION

Petitioner, Melville Industrial Associates, 425 Broad Hollow Road, Melville, New York 11746, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964 and 1965 (File No. 01654).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 5, 1976 at 9:50 A.M., and was continued on March 16, 1977 at 9:50 A.M. Petitioner appeared by Herbert Granoff, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner is liable for unincorporated business tax on income derived from the sale and/or lease of subdivided lots improved by petitioner for industrial users.

FINDINGS OF FACT

1. Petitioner, Melville Industry Associates, timely filed IT-204 partnership returns for 1964 and 1965, with schedules attached, indicating long-term capital gains for the sale of real property (land) for the years in question; however, it did not pay unincorporated business tax for the income derived therefrom.

2. On April 12, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, a partnership, asserting unincorporated business tax for 1964 and 1965 on income derived by petitioner from the sale and/or leasing of improved real property sublots in Huntington Township, New York. Accordingly, a Notice of Deficiency was simultaneously issued for these years in the amount of \$14,161.83, plus interest of \$4,816.56, for a total of \$18,978.39.

3. Petitioner timely filed a petition for redetermination of a deficiency or for refund for the subject years, contending that the capital gains realized and reported on the partnership real estate sales amounted to a liquidation of real estate holdings that were held for investment purposes only, and that it was not a sale to customers in the ordinary course of petitioner's trade or business.

4. The partnership was originally formed in 1956 under a written partnership agreement, wherein certain partners held title to some 160 acres of unimproved land in the Town of Huntington, Long Island, near the Long Island Expressway.

5. The partnership's stated purpose was to erect industrial buildings on subdivided lots of from one to three acres, on its aforementioned real property, and to lease or sell the buildings or lots to other parties for "investment" purposes. Although the agreement provided that sales of the parcels were contemplated, testimony at the hearing established that the partners primarily intended that the subdivided improved parcels were only to be leased to small industrial users, as part of the partnership's investment portfolio.

6. In October of 1963, the local zoning authorities restricted the subdivision of lots to six acres in size. This and other restrictions made it economically unfeasible for small industrial users to lease the subdivided lots as such, and the partnership was forced to sell some 60 acres of the lots

to larger industrial users, while leasing or holding the remainder.

7. It was also established by the evidence that the sole business activity of the partnership during the years at issue was to subdivide and improve the lots, file plans with the local zoning authority, and to sell or lease the improved lots to industrial users.

CONCLUSIONS OF LAW

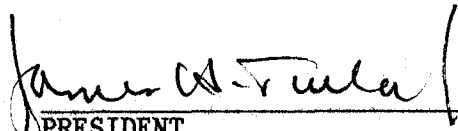
A. That the income derived by petitioner from the sale and lease of real property, during the subject years was an integral, and indeed, the sole business activity of the partnership during such years, i.e., petitioner was in the business of selling real property to customers in the ordinary course of business, and is subject to unincorporated business tax on the income derived therefrom for these years, within the meaning of section 703(d) of the Tax Law (See Matter of Clark, State Tax Commission decision, October 2, 1967). Petitioner's activities constituted more than "holding, leasing or managing real property" as those terms are used in section 703(e) of the Tax Law.

B. That the petition of Melville Industrial Associates is in all respects denied, and the Notice of Deficiency issued on April 12, 1971 is sustained, together with such additional interest as may be lawfully owing.


DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER