

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN and EVELYN BELOTT

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 (x) ~~xxxx~~ Period(s) 1970.:  
~~xxxx~~

State of New York  
County of Albany

John Huhn , 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 14th day of February , 1979 , she served the within  
Notice of Decision by (certified) mail upon John and Evelyn Belott

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

John and Evelyn Belott  
Elnora, 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)~~  
~~xxxx~~ 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

14th day of February , 1979

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN and EVELYN BELOTT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(2)~~ 23 of the :  
Tax Law for the Year ~~(2)~~ ~~1970~~ 1970. :

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 14th day of February , 19 79, he served the within  
Notice of Decision by (certified) mail upon Louis Giaquinto, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows:  
Louis Giaquinto, CPA  
Charles L. Marvin and Company, P.C.  
12 Jay Street  
Schenectady, NY 12305

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

14th day of February , 19 79

Marilyn J. Papineau

John Huhn



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

February 14, 1979

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

John and Evelyn Belott  
Elnora, New York

Dear Mr. and Mrs. Belott:

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 ~~(x)~~ **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,

Joseph Chyrywaty  
Hearing Examiner

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	:	
JOHN and EVELYN BELOTT	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1970.	:	

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Petitioners, John and Evelyn Belott, Elnora, New York, 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 1970 (File No. 12521).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 8, 1978 at 9:00 A.M. Petitioners appeared by Louis Giaguinto, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUE

Whether the gain received by petitioners in 1970 from the sale of land was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, John and Evelyn Belott, timely filed a New York State personal income tax return for 1970. They did not file an unincorporated business tax return for said year.

2. The Income Tax Bureau issued a Statement of Audit Changes to petitioners, in which it contended that certain land sold by them had been an asset used in their business of farming; therefore, the gain derived from the sale was subject to unincorporated business tax. It also made other adjustments which petitioners conceded were valid and are not at issue. Accordingly, the Income Tax Bureau issued a Notice of Deficiency against petitioners on February 24, 1975 for 1970 of \$2,521.49 in unincorporated business tax, plus \$583.64 in interest, for a total of \$3,105.13. An overpayment (plus interest) in the sum of \$1,060.11 was to be applied against this sum, leaving a balance due of \$2,045.02.

3. Petitioners contended that the land in question was never used for farming. It was wooded land which was purchased and held for investment purposes. They further contended that they owned at least seven parcels of land in the same general vicinity. All parcels (including the land at issue) were referred to as "farms", i.e., Jensen Farm, Dyer Farm, Houck Farm, Tanner Farm, Weeks Farm, Johnson Farm, etc. Also, they contended that all parcels at one time or other were used in their business of farming, except for the land at issue.

4. Petitioners did not submit documentary or any satisfactory evidence to show that the land in question was purchased for investment purposes only and that it was not an asset of their farm business. Petitioners only business was that of farming. No documentary evidence was submitted to show that the expenses attributable to said land were ever treated separately and apart from other expenses of the farm business for accounting and tax purposes.

CONCLUSIONS OF LAW

A. That petitioners did not sustain the burden of proof (in accordance with section 689(e) of the Tax Law) required to show that the land in question was not an asset of their business.

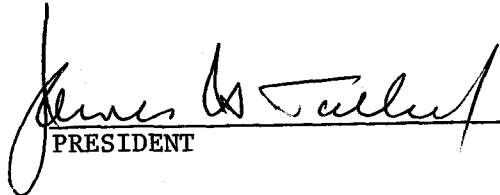
B. That the gain derived from the sale of said land constituted income from an asset which was integrated and connected with petitioners' farming business, and that it was not income received solely by reason of their holding, leasing or managing real property exempt from the imposition of unincorporated business tax, in accordance with the meaning and intent of section 703(e) of the Tax Law. Neither was the land purchased and sold for their own account, thereby exempting it in accordance with section 703(d) of the Tax Law; therefore, petitioners' gain was includable in business gross income in accordance with the meaning and intent of section 705(a) of the Tax Law.

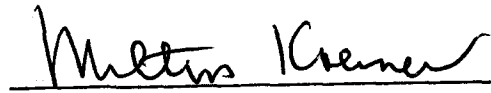
C. That the land in question was alleged to be wooded land and not used for farming, since all land was integrated in the farming business and was not used for any other purpose, was immaterial. Accordingly, petitioners' real estate transactions pertaining to the land in question constituted a part of the carrying on of their unincorporated business; thus, the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

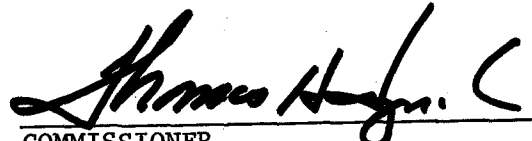
D. That the petition of John and Evelyn Belott is denied and the Notice of Deficiency issued February 24, 1975 is sustained.

DATED: Albany, New York  
February 14, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER