

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Anne (Weiss) Bergman :

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 1968, 1969, 1970 & 1971. :

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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Anne (Weiss) Bergman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Anne (Weiss) Bergman  
250 W. 57th St.  
New York, NY 10019

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  
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

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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 20th day of June, 1980, he served the within notice of Decision by certified mail upon Guy P. Novo 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. Guy P. Novo  
Coudert Brothers  
200 Park Ave.  
New York, NY 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  
20th day of June, 1980.

Joanne Knapp

J. J. Vredenburg

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

June 20, 1980

Anne (Weiss) Bergman  
250 W. 57th St.  
New York, NY 10019

Dear Ms. Bergman:

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  
Guy P. Novo  
Coudert Brothers  
200 Park Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ANNE (WEISS) BERGMAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1968, 1969, 1970 and 1971.	:	

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Petitioner, Anne (Weiss) Bergman, 250 West 57th Street, New York, New York 10019, 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 1968, 1969, 1970 and 1971 (File No. 10979).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 13, 1979 at 9:30 A.M. Petitioner appeared by Martin Oliner and Guy P. Novo, Esqs. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

#### ISSUES

I. Whether the gain on an installment sale is subject to the imposition of unincorporated business tax.

II. Whether said gain, if subject to the unincorporated business tax, can be combined with profits and losses derived from other unincorporated business entities, of which petitioner had an interest, for the purpose of computing such tax.

#### FINDINGS OF FACT

1. Anne (Weiss) Bergman (hereinafter "petitioner") filed joint New York State income tax resident returns with her husband, Bernard Bergman, for the years 1968, 1969, 1970 and 1971. She did not file unincorporated business

tax returns for said years.

2. On April 11, 1975 the Income Tax Bureau issued a Statement of Audit Changes to the petitioner whereon unincorporated business tax was imposed for each year at issue herein on the gains and interest income derived from a 1965 installment sale of the lease for the Towers Nursing Home, 2 West 106th Street, New York City. Accordingly, on April 11, 1975 a Notice of Deficiency was issued against the petitioner asserting unincorporated business tax of \$6,967.91, penalties of \$2,722.71, and interest of \$1,855.42, for a total due of \$11,546.04.

3. Prior to 1965 petitioner was the sole owner of a lease in real property located at 2 West 106th Street, New York City. The property, which consisted of land and a building, was used in the operation of the petitioner's sole proprietorship, the Towers Nursing Home.

4. On July 12, 1965 petitioner sold her entire interest in said lease to Liberty House of New York, Inc. (Liberty) for \$1,026,924.10. Part of the sales price was paid on the installment basis by a promissory note for \$730,000.00, payable in equal monthly installments of principal and interest. Petitioner only contested the imposition of unincorporated business tax on the installment gains for the years at issue. The imposition of said tax on the interest income attributable to such sale was not contested at the hearing held herein.

5. Concurrent with the aforementioned sale, Liberty subleased the property back to the petitioner, who continued to operate the Towers Nursing Home.

6. On January 27, 1968, the sublease to petitioner was superceded by a new sublease to a partnership consisting of the petitioner and two other individuals, doing business as the Towers Nursing Home.

7. Petitioner contended that since she was not engaged as an individual in the operation of the Towers Nursing Home during the years 1968, 1969, 1970 and 1971, the installment gains attributable to the 1965 sale, which were

received during said years, would not be subject to the unincorporated business tax. Further, she contended that even if the gains were subject to said tax, they should be combined with profits and losses derived from other unincorporated business entities, of which she had an interest, for the purpose of computing such tax.

8. During the years 1968, 1969, 1970 and 1971 petitioner held interests in various nursing home partnerships engaged in unincorporated businesses. No unincorporated sole proprietorships were operated by her during said years.

CONCLUSIONS OF LAW

A. That the installment gains received during 1968, 1969, 1970 and 1971, attributable to petitioner's sale during 1965 of the Towers Nursing Home lease, were gains from property employed in her unincorporated business within the meaning and intent of section 705(a) of the Tax Law. Accordingly, such gains are subject to the imposition of unincorporated business tax within the meaning and intent of section 701(a) of the Tax Law.

B. That since petitioner, as an individual, did not carry on two or more unincorporated businesses during the years at issue, the installment gains at issue herein cannot be combined with the profits and losses of partnerships of which she held an interest, for the purpose of computing unincorporated business tax, within the meaning and intent of section 703(a) of the Tax Law.

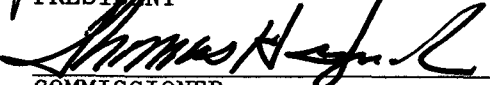
C. That the petition of Anne (Weiss) Bergman is denied and the Notice of Deficiency dated April 11, 1975 is sustained together with such additional penalty and interest as may be lawfully owing.

DATED: Albany, New York

JUN 20 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER