

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Speros, Ted, John & Nick Dellas P/S :  
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 Year 1972. :

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Speros, Ted, John & Nick Dellas P/S, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Speros, Ted, John & Nick Dellas P/S  
802 S. Crouse Ave.  
Syracuse, NY 13210

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  
11th day of January, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Speros, Ted, John & Nick Dellas P/S :

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 Year 1972. :

AFFIDAVIT OF MAILING

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 11th day of January, 1980, he served the within notice of Decision by certified mail upon Arnold J. Hodes 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. Arnold J. Hodes  
Sidney Josef and Company  
2030 Erie Blv E.  
Syracuse, NY 13224

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  
11th day of January, 1980.

Joanne Knapp

[Signature]

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

January 11, 1980

Speros, Ted, John & Nick Dellas P/S  
802 S. Crouse Ave.  
Syracuse, NY 13210

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  
Arnold J. Hodes  
Sidney Josef and Company  
2030 Erie Blv E.  
Syracuse, NY 13224  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
SPEROS, TED, JOHN and NICK DELLAS, Partnership	:	DECISION
for Redetermination of a Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Year 1972.	:	

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Petitioner, Speros, Ted, John and Nick Dellas, a partnership, 802 South Crouse Avenue, Syracuse, New York 13210, 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. 14092).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on May 24, 1979 at 9:15 A.M. Petitioner appeared by Arnold J. Hodes, CPA. The Audit Division appeared by Peter Crotty, Esq. (Kathy L. Sanderson, Esq., of counsel).

#### ISSUE

Whether the petitioner properly excluded rental income, interest income and the gain on a sale of real property received from a condemnation award when computing the unincorporated business tax portion on the New York State Partnership Return for 1972.

#### FINDINGS OF FACT

1. Petitioner, Speros, Ted, John and Nick Dellas, a partnership, filed a New York State Partnership Return for 1972.

2. On April 12, 1976, the Audit Division issued a Notice of Deficiency against petitioner for 1972 on the grounds that interest income derived from the rental of real estate and a condemnation award received on rental property were considered to be part of the coffee shop operation and therefore subject to the unincorporated business tax. The Notice of Deficiency imposed additional unincorporated business tax of \$2,780.90, plus interest of \$623.98 for a total due of \$3,404.88.

3. Petitioner, Speros, Ted, John and Nick Dellas, a partnership is a consolidated partnership consisting of four separate business partnerships located in the Syracuse, New York area. Speros Dellas, Ted Dellas, John Dellas and Nick Dellas each own a twenty-five percent interest in three partnerships which hold and lease real property. The three partnerships are called Dellas Brothers Real Estate, Manlius Real Estate and North Burduck Real Estate. Dellas Brothers Real Estate owns land and buildings on South Crouse Avenue and Allen Street in Syracuse. North Burduck Real Estate owns land and buildings on North Burduck Avenue in Fayetteville, New York. Manlius Real Estate owns and rents a shopping center in Manlius, New York. All the real estate was either inherited from their father or bought with proceeds obtained from the sale of inherited property.

4. The fourth business partnership was Varsity Coffee Shop, which consists of three active partners and one inactive partner, who receives a portion of the income remaining after the draw of the other partners. The partnership paid unincorporated business tax on the net business income derived from Varsity Coffee Shop.

5. All four businesses maintained separate books, records and bank accounts. The funds of the Varsity Coffee Shop were not used in the purchase of real estate nor were real estate funds used to operate Varsity Coffee Shop. The Varsity Coffee Shop was charged rent for the use of a portion of a building owned by Dellas Brothers Real Estate.

6. A condemnation award and interest income was received by Dellas Brothers Real Estate operation. This award was attributable to land owned by Dellas Brothers Real Estate and had no connection with the Varsity Coffee Shop operation.

CONCLUSIONS OF LAW

A. That the interest income and the gain derived from the condemnation award attributable to land owned by Dellas Brothers Real Estate and the rental income from the parcels of real property owned by Dellas Brothers Real Estate, Manlius Real Estate and North Burdick Real Estate are not subject to the unincorporated business tax within the meaning and intent of section 703(d) and (e) of the Tax Law; therefore, the income received by said partnerships in real estate and the partnership known as "Varsity Coffee Shop" are not to be combined for unincorporated business tax purposes.

B. That the petition of Speros, Ted, John and Nick Dellas, partnership is granted and the Notice of Deficiency issued April 12, 1976 is cancelled.

DATED: Albany, New York

JAN 11 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER