

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Farmingdale Individual Laundry Service :
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 1970. :

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Farmingdale Individual Laundry Service, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Farmingdale Individual Laundry Service
c/o Soley Goldberg
28 Shorewood Dr.
Sands Point, NY 11050

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
7th day of July, 1980.

Deborah A Bank

J. L. Goldberg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Farmingdale Individual Laundry Service :
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 1970. :

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon William D. Hecht 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. William D. Hecht
M. R. Weiser & Co.
30 E. 40th St.
New York, NY 10016

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
7th day of July, 1980.

Dorothy A. Bank

J. Vredenburg

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

July 7, 1980

Farmingdale Individual Laundry Service
c/o Soley Goldberg
28 Shorewood Dr.
Sands Point, NY 11050

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
William D. Hecht
M. R. Weiser & Co.
30 E. 40th St.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
FARMINGDALE INDIVIDUAL LAUNDRY SERVICE : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Year 1970. :
:

Petitioner, Farmingdale Individual Laundry Service, c/o Soley Goldberg, 28 Shorewood Drive, Sands Point, New York 11050, 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. 13859).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1977 at 1:15 P.M. Petitioner appeared by William D. Hecht, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether the gain realized on the sale of a parcel of land and a building in which a laundry business was conducted is taxable as unincorporated business income.

FINDINGS OF FACT

1. On September 30, 1966, Soley Goldberg purchased 100% of the stock of Farmingdale Individual Laundry Service, Inc. ("the corporation"), as nominee for himself and two investor-partners.

2. The basic selling price was \$528,000.00, subject to adjustments for assets other than laundry equipment, routes, goodwill and real estate, less assumed liabilities of \$178,207.00, for a cash price of \$411,324.00.

3. Simultaneously with the closing, the corporation was liquidated under section 331 of the Internal Revenue Code, and the assets were transferred to Farmingdale Individual Laundry Service ("the partnership").

4. The liquidation was not taxable to the shareholders as the amount of net assets received (\$411,324.00) was equal to their basis for the stock.

5. The basis for the assets received by the partnership amounted to the following:

Basis of stock	\$411,324.00
Assumed liabilities	178,207.00
<u>TOTAL</u>	<u>\$589,531.00</u>
and were allocated:	
Machinery and equipment	50,000.00
Delivery equipment	12,000.00
Building	130,000.00
Office equipment	1,000.00
Land - 14.0808 acres	290,000.00
Goodwill	45,000.00
Other Assets	<u>61,531.00</u>
 TOTAL	 \$589,531.00

6. In 1967 some assets of the same partnership were transferred to a Subchapter "S" corporation under the name Farmingdale Launderers and Cleaners, Inc., c/o Soley Goldberg, with the same address as the partnership.

7. In 1968 the laundry was sold and liquidated.

CONCLUSIONS OF LAW

A. That a partnership which acquires, holds, and subsequently disposes of real property cannot be deemed to be engaged in an unincorporated business solely by reason thereof. (Section 703 of the Tax Law and Regulations section 203.13.)

B. That petitioner has sustained its burden of proof that the land was substantially unrelated to the activities of the laundry; that the intent of the parties from the inception was to effect a profitable real estate transaction;

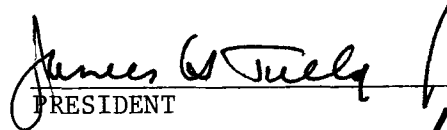
and that the laundry operation (which encountered substantial losses and was eventually dissolved) was, in fact, incidental to the real estate transaction.

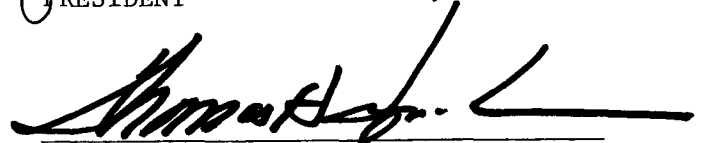
C. That the petition of Farmingdale Individual Laundry Service is granted and the Notice of Deficiency dated September 30, 1974 is cancelled.

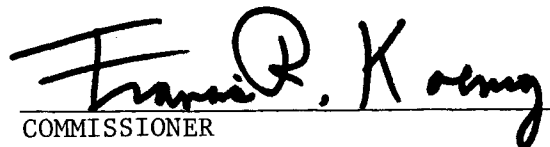
DATED: Albany, New York

STATE TAX COMMISSION

JUL 07 1980


PRESIDENT


COMMISSIONER


COMMISSIONER