

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

G.A.E. 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 1965-1969. :

State of New York
County of Albany

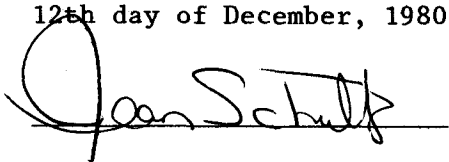
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon G.A.E. Associates, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

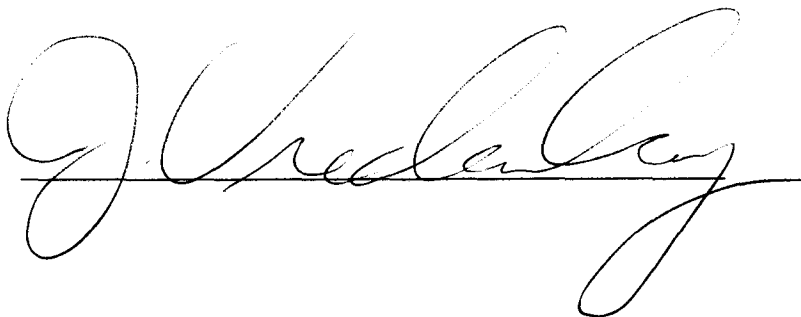
G.A.E. Associates
17 Bon Aire Circle
Suffern, NY 10901

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
12th day of December, 1980.


Jan Schultz


Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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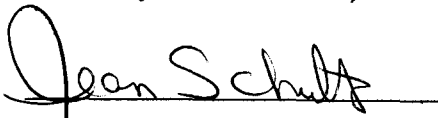
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Matthew F. Magidson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

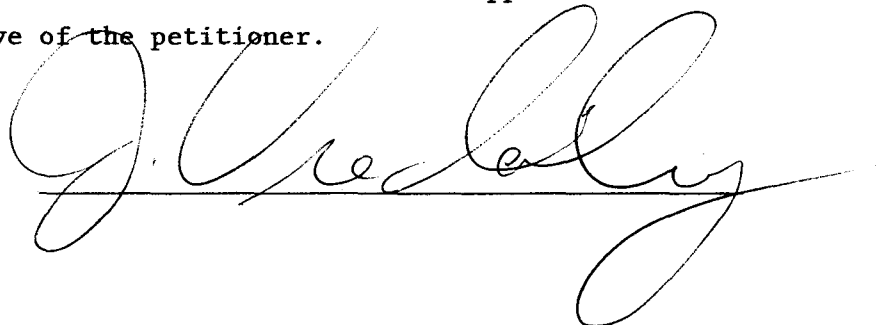
Mr. Matthew F. Magidson
Laitman, Matthews & Magidson
1450 Broadway
New York, NY 10018

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
12th day of December, 1980.





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

December 12, 1980

G.A.E. Associates
17 Bon Aire Circle
Suffern, NY 10901

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
Matthew F. Magidson
Laitman, Matthews & Magidson
1450 Broadway
New York, NY 10018
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
G.A.E. ASSOCIATES	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Years 1965	:	
through 1969.	:	

Petitioner, G.A.E. Associates, 17 Bon Aire Circle, Suffern, New York 10901, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1965 through 1969 (File No. 20392).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on November 30, 1978 and continued to conclusion before Julius E. Braun, Hearing Officer, at the same location on January 26, 1979. Petitioner appeared by Matthew F. Magidson, Esq. The Audit Division appeared by Peter Crotty, Esq. (Barry M. Bresler, Esq. of counsel).

ISSUE

Whether petitioner was subject to unincorporated business tax for the years 1965 through 1969.

FINDINGS OF FACT

1. On April 14, 1972, the Income Tax Bureau issued two Notices of Deficiency against G.A.E. Associates, one for the years 1965 and 1966 and the other for the years 1967 through 1969, asserting deficiencies in unincorporated business tax. The deficiencies were based upon an Internal Revenue Service determination and information on file which led the Bureau to conclude that

the total income of the partnership represented income subject to tax pursuant to Article 23 of the Tax Law. The deficiency in unincorporated business tax due totaled \$25,759.18 to which were added penalties under section 685(a) of the Tax Law for failure to file unincorporated business tax returns for the years 1965 through 1968 in the amount of \$4,715.24 and a penalty under sections 685(a)(1) and (2) for 1969 in the amount of \$2,379.89 and interest for 1965 through 1969 in the amount of \$6,299.07 for a total of \$39,153.38.

2. G.A.E. Associates timely filed New York State Partnership Returns for the years 1965 through 1969. The 1965 and 1966 returns stated that the kind of business was real estate and computed a tax of "0" in the Unincorporated Business Tax Section of the return. The 1967, 1968 and 1969 returns did not indicate a type of business and the unincorporated business tax sections of the returns were not completed. The partnership was founded in 1963 and acquired a 60 acre tract of land in Rockland County for approximately \$500,000.00. Ten acres were sold in 1964 to American Tack. In 1965, 23 acres were sold to J.H.W. Construction. Five parcels were sold in 1966, and in 1967 the profit from an installment sale in 1966 was reported. There were no sales in 1968 and no details were submitted in reference to the net long term gain reported on the 1968 partnership return. In 1969 the profit from the installment sale of five parcels sold in 1966 was received and reported as were the proceeds from a condemnation award on the last of the subdivisions.

3. On November 10, 1969, pursuant to an audit of G.A.E. Associates, the Internal Revenue Service found that for the years 1965, 1966 and 1967, the gain realized on the sale of the property was ordinary income rather than long term capital gains as originally reported, and that the property sold on the installment basis was determined to be property sold in the ordinary course of business.

4. In 1965, a total of \$5,864.17 was taken by G.A.E. Associates on its tax returns for various deductions including insurance, telephone, professional fees, "Office and S.C.", gratuities, travel and entertainment, and advertising. In 1966 office expense was listed as \$2,200.37. In 1967, management services and office expense was listed as \$3,446.73, insurance \$19.50, bank charges \$28.04, travel and entertainment \$163.37, utilities \$577.27, repairs and maintainance \$1,085.45. (Deductions for 1967 totalled \$5,320.36). In 1968 a total of \$2,107.62 was deducted which included management services in the amount of \$876.08, bank charges \$16.41, insurance \$194.46 and miscellaneous \$38.72. In 1969, \$852.91 was deducted for bank charges \$14.66, office \$65.00 insurance \$38.00 and professional fees \$735.25.

5. Sales by G.A.E. Associates were as follows:

<u>Purchaser</u>	<u>Acreage</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>	<u>1967</u>	<u>1968</u>	<u>1969</u>
American Tack	10.0	*					
JHW Construction	23.0		\$152,232.50	\$207,445.00	\$105,656.25	(Installment sale)	
Hershkowitz	.333)						
Elmowsky	2.028)						
W & L #2	6.405) --			\$40,995.89			\$21,859.44
W & L #1	2.743)						
Ellish & Goldstein	1.0)						
Condemnation	14.491						\$150,237.85
<u>TOTALS</u>	60.00		\$152,232.50	\$248,440.89	\$105,656.25	--	\$172,097.29

* Sold in 1964 - prior to years in issue

6. Petitioner offered no documentary or other substantial evidence of what was done with the proceeds of the condemnation award realized in 1969.

CONCLUSION OF LAW

A. That the income received by petitioner, G.A.E. Associates, during the years 1965 through 1969 on the sale of the various portions of the sixty acre parcel bought by the partnership constituted income of an unincorporated

business pursuant to section 705 of the Tax Law and was subject to unincorporated business tax in accordance to the meaning and intent of section 701(a) of the Tax Law.

B. That the gain realized on the involuntary conversion of the property was subject to the unincorporated business tax, Matter of Wesnofske, State Tax Commission February 25, 1971.

C. That GAE Associates had timely filed unincorporated business tax returns for 1965 and 1966 and, therefore the penalties imposed pursuant to section 685(a) of the Tax Law are hereby cancelled.

D. That except as modified above, the petition of G.A.E. Associates is denied and the Notices of Deficiency issued April 14, 1972 are sustained.

DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION

James B. Tully
PRESIDENT

Thomas H. Lynch
COMMISSIONER

Francis R. Koenig
COMMISSIONER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

RECEIVED
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☐ *SEARCHED*
NEW YORK 10018

~~Matthew F. Magidson
Laitman, Matthews & Magidson
1450 Broadway
New York, NY 10018~~

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TAX APPEALS BUREAU

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

December 12, 1980

G.A.E. Associates
17 Bon Aire Circle
Suffern, NY 10901

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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Matthew F. Magidson
Laitman, Matthews & Magidson
1450 Broadway
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Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

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ISSUE

Whether petitioner was subject to unincorporated business tax for the years 1965 through 1969.

FINDINGS OF FACT

1. On April 14, 1972, the Income Tax Bureau issued two Notices of Deficiency against G.A.E. Associates, one for the years 1965 and 1966 and the other for the years 1967 through 1969, asserting deficiencies in unincorporated business tax. The deficiencies were based upon an Internal Revenue Service determination and information on file which led the Bureau to conclude that

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DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER