

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Queens Parking Company (dissolved) :  
: 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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Queens Parking Company (dissolved), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Queens Parking Company(dissolved)  
c/o David Zelin  
171 Stratford N.  
Roslyn Heights, NY

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  
5th day of June, 1981.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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of :  
Queens Parking Company (dissolved) :

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Business Tax under Article 23 of the Tax Law for :  
the Year 1972

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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 5th day of June, 1981, he served the within notice of Decision by certified mail upon Stuart Kessler 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. Stuart Kessler  
Goldstein, Golub, Kessler & Co.  
245 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  
5th day of June, 1981.

*Connie A. Haglund*

*J. Vredenburg*

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

June 5, 1981

Queens Parking Company (dissolved)  
c/o David Zelin  
171 Stratford N.  
Roslyn Heights, NY

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  
Stuart Kessler  
Goldstein, Golub, Kessler & Co.  
245 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	:	
	:	
QUEENS PARKING COMPANY	:	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, Queens Parking Company, c/o David Zelin, 171 Stratford North, Roslyn Heights, New York 11577, 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. 17713).

A formal hearing was held before Herbert Carr, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on August 24, 1979 at 9:30 A.M. and was continued before Stanley Buchsbaum, Hearing Officer, on April 23, 1980 at 9:15 A.M. Petitioner appeared by Goldstein, Golub, Kessler & Company (Stuart Kessler, CPA). The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

- I. Whether assessment of unincorporated business tax is barred by the period of limitations.
- II. Whether the real property taken in the condemnation proceeding was owned by petitioner, Queens Parking Company.
- III. Whether petitioner's activities with regard to the real property were of such a nature as to make the unincorporated business tax inapplicable.

IV. Whether an award for real property in a condemnation proceeding is exempt from unincorporated business tax if it is timely reinvested in real property and, if so, whether the award to petitioner was timely reinvested.

FINDINGS OF FACT

1. On November 22, 1976 a Notice of Deficiency, together with an explanatory Statement of Audit Changes was issued for 1972 against petitioners in the amount of \$14,651.63 plus interest. Subsequently a timely petition for redetermination of a deficiency was filed.

2. David Zelin and Saul Zelin are brothers. They were primarily engaged in two types of business: as meat wholesalers; and as operators of diner restaurants. David Zelin was in charge of the meat business and Saul Zelin the diner business. The meat firm was incorporated and owned wholly by the brothers and their father. The two brothers owned 30 percent interests in three or four diners. Various relatives owned the remainder, with none owning more than a 15 percent interest.

3. The Zelin brothers also owned a 40 percent interest in a small diner, which was about forty years old, on Christopher and Washington Streets in Manhattan. They had sold meat to this diner and, when its owners were unable to pay the meat bills, petitioner received this interest in payment thereof.

4. The plot on which this small diner was located was owned by a subsidiary of the New York Central Railroad. It consisted of about 13,656 square feet. A portion of it was used as a public parking lot; there was also a gasoline pump on it.

5. The Zelin brothers purchased the property from the New York Central subsidiary in October, 1961, for \$110,000.00. Their attorney had an unused corporate shell, named Queens Parking Corp., and title was taken in the name of

that corporation. Their attorney recommended that no change in the ownership be made until they gained full possession from the parking lot operator and permanent financing had been completed.

6. At the time the property was purchased, the Zelins contemplated using it for a drive-in type diner and, if that did not work out, selling it for a profit.

7. Before attempting to develop the property as planned petitioners had to evict the parking lot operator and await the removal of an overhead railway structure by the New York Central. It took a year and a half to two years to evict the parking lot operator and a "few years" before the structure was removed. In the meantime petitioners raised the rent of the diner from \$300 a month to \$500, but it had financial difficulty and they, therefore, lowered the rent.

8. By the time the parking lot operator had been removed or shortly thereafter, there were rumors of developments in the area, including the construction of high rise apartments or condemnation of the property by the City of New York. The Zelins did not go ahead with their plans for a drive-in diner. They allowed the existing diner to continue on the premises. They operated the parking lot although it brought in only about \$40 a week. It was also used for parking their own trucks. They also operated the gas pump although, they assert, that the gas used was mostly for their own trucks and their drivers' cars. They paid the man who operated the parking lot.

9. In August, 1969, Queens Parking Corp., the titleholder of the property, was dissolved on the attorney's recommendation. No evidence was submitted to show how and to whom title to the property was transferred. David Zelin testified that title went to him and his brother, but he also testified that

the mortgage on the property was renewed by him and his brother as partners. Queens Parking Corp. filed its last corporate income tax return for the period of October 1, 1968 to March 31, 1969. It listed its activities as "automobile parking and retail gasoline". The address given was 640 Washington Street. For 1969, a New York State Partnership Return (Income and Unincorporated Business Tax) was filed by David and Saul Zelin, doing business as "Queens Parking Co.". It used the same address, 640 Washington Street; and it described the kind of business in essentially the same manner, "Parking and retail gasoline". Deductions were taken for interest and New York City real estate taxes.

10. In a condemnation proceeding the City of New York took title to the property on December 3, 1969. The award for the property, which amounted to \$367,000.00 in principal, was not made until January 4, 1972.

11. For 1970 "Queens Parking Co." filed a New York State Partnership Return, listing as deductions, interest in the sum of \$1,576.66, and a small amount for taxes and describing the business as "Parking & Retail Gasoline". For 1971 a similar return was filed by giving the nature of its business as "Real Estate", and listing a deduction for interest. For 1972 a similar return was filed, stating that the business was dormant. It listed as income, interest in the amount of \$57,302.12 and, as deductions, interest of \$1,767.19. It had attached to it a portion of another tax form on which there are entries, under the heading "Long-term capital gains and losses", of "Land-Condemnation", giving the date of acquisition as April 1, 1969, and of sale as August 2, 1972, the gross sale price as \$367,000.00, the cost of acquisition as \$143,067.55 and stating the total gain as \$223,932.45.

12. For 1972 a U.S. Partnership Return was filed for "Queens Parking Co.", showing interest income on the condemnation award, as well as the principal of that award. This income is also dealt with in the U.S. Individual Income Tax Return for 1972 of David Zelin and his wife. Attached to that return is a handwritten statement which includes the following: "Income producing property owned by Queens Parking Co. of which David Zelin holds a 50% interest in partnership was converted by City of New York."

13. David Zelin, in his testimony, sought to explain away the New York and United States tax returns by saying that they were improperly prepared by the two different accountants who prepared them and that he or his brother signed the returns without examining them.

14. The evidence is overwhelming that the real property at Christopher and Washington Streets was owned and operated by an unincorporated business known as Queens Parking Company after the dissolution of Queens Parking Corp. in August, 1969.

15. Although David Zelin testified that the condemnation award was reinvested, there was no evidence with regard to when this occurred or the nature of the investment.

16. The New York State Partnership Return forms have a section for "Unincorporated Business Tax and Payments". In none of the partnership returns, including the 1972 return, was any entry made in this section.

17. The 1972 New York State Partnership Return was originally filed with a notation "Final Return" and dated March 13, 1973. This was followed by one marked "Final Return - Amended Return", dated "4/2/73" by the preparer and, apparently erroneously "4/3/77" by the signer, David Zelin. The 1972 returns also listed the kind of business as "dormant". The only difference between the



two returns, aside from the notations referred to and the dates, is a response to questions as to whether returns were filed for 1970 and 1971 on the later return.

18. From early in 1969, when Queens Parking Company acquired the property from the dissolved corporation, it operated the property as a parking lot and a limited gasoline station aside from the area used by the diner. Even though title passed to New York City in early December, 1969, these operations continued and were not brought to an end until sometime in 1970.

#### CONCLUSIONS OF LAW

A. That the property taken in the condemnation proceeding was owned by Queens Parking Company at the time title passed to the City of New York.

B. That during the period that title to the property was in Queens Parking Company it was not held solely to hold, lease or manage real property, but was held also to operate the business of selling gasoline and operating a public parking lot. Matter of Warnecke v. State Tax Comm., 15 A.D.2d 320.

C. That, whether or not proceeds of a condemnation proceeding are exempt from unincorporated business tax if, within a limited period, such proceeds are reinvested in real property, such an exemption is not applicable here since there was no showing with regard to when or in what the proceeds were invested.

D. That the imposition of unincorporated business tax is not barred by the statute of limitations since the New York State Partnership Return for 1972 filed by Queens Parking Company on or about April 3, 1973, did not contain sufficient information to determine the nature of the partnership activity. (Matter of Arbesfeld, Goldstein v. State Tax Commission, 62 A.D.2d 627; see also Matter of Riker-Madden Real Estate and Elizabeth M. Rieker and Lee J.

Madden individually and as co-partners, State Tax Commission Decision, November 26, 1979).

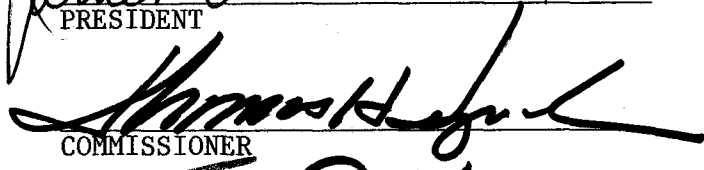
E. That the petition of Queens Parking Company is denied and the Notice of Deficiency dated November 22, 1976 is sustained together with such interest as may be lawfully due.

DATED: Albany, New York

JUN 5 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER