

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
East Fishkill Associates :  
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 1971. :  
:

AFFIDAVIT OF MAILING

State of New York  
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon East Fishkill Associates, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

East Fishkill Associates  
c/o Schneur Genack  
30 W. 47th St.  
New York, NY 10036

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  
6th day of May, 1983.

David Parchuck

Gavin R. Haglund

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

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State of New York  
County of Albany

David Parchuck, 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 6th day of May, 1983, he served the within notice of Decision by certified mail upon Samuel M. Eisenstat the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Samuel M. Eisenstat  
Eisenstat & Gottesman, P.C.  
30 Rockefeller Plaza  
New York, NY 10020

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  
6th day of May, 1983.

David Parchuck

Samuel M. Eisenstat

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

May 6, 1983

East Fishkill Associates  
c/o Schneur Genack  
30 W. 47th St.  
New York, NY 10036

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Samuel M. Eisenstat  
Eisenstat & Gottesman, P.C.  
30 Rockefeller Plaza  
New York, NY 10020  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
EAST FISHKILL ASSOCIATES  
for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Year 1971.

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DECISION

Petitioner, East Fishkill Associates, c/o Schneur Genack, 30 West 47th Street, New York, New York 10036, 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 1971 (File No. 12581).

A formal hearing was commenced before Archibald Robertson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on September 29, 1978 at 1:15 P.M. and continued sine die. Petitioner appeared by Eisenstat & Gottesman, P.C. (Samuel M. Eisenstat, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

By letter dated January 14, 1980, petitioner waived further formal hearing and consented to submission of the petition to the State Tax Commission on the file as presently constituted.

ISSUE

Whether there was a gain when petitioner's property was appropriated by the State, pursuant to the laws of eminent domain, which gain was subject to the unincorporated business tax.

FINDINGS OF FACT

1. On May 6, 1966, a joint venture agreement was executed by Isaac Genack (now deceased), Rosa Genack, Azriel Genack, Samuel Eisenstat, Lazar Matz, Mannie A. Shapiro, Bernard Gold and Arthur Michaelson. The joint venture was conducted under the name and style of East Fishkill Associates.

2. In 1966, East Fishkill Associates acquired certain real property, comprising approximately 26.499 acres in the town of East Fishkill, Dutchess County, for a consideration of \$180,000.00, plus brokerage fees in the sum of \$20,000.00. On October 28, 1970, approximately 13.902 acres of said property were appropriated by the State pursuant to section 30 of the Highway Law. The State's offer to the joint venturers for the property was \$213,000.00, and a partial payment of \$159,750.00, constituting seventy-five percent of the total offer, plus interest thereon of \$5,617.88, was made by the State in 1971.

3. On March 31, 1975, the Income Tax Bureau issued a Statement of Audit Changes against Rosa Genack, the Estate of Isaac Genack and Samuel M. Eisenstat, individually and as co-partners d/b/u the firm name and style of East Fishkill Associates, showing unincorporated business taxes due in the amount of \$2,414.56, plus interest of \$428.90, for a total of \$2,843.46. The Notice of Deficiency issued under the same date stated, in pertinent part:

"The interest and gain on involuntary conversion of property held by East Fishkill Associates is subject to the Unincorporated Business Tax as the property was held for business purposes."

Said notice stated that the cost basis of the property at the time of condemnation was \$254,994.00 which amount consisted of the following:

Payment on purchase of property	\$ 45,000.00
Purchase money mortgages	135,000.00
Brokerage fees	20,000.00
Mortgage recording and misc.	873.00
Interest on mortgages	46,018.00
Real estate taxes	6,603.00
Professional fees	1,500.00
Total	<u>\$254,994.00</u>

4. The Statement of Audit Changes issued against East Fishkill Associates apportioned the cost basis of the real property in accordance with the ratio 13.902/34 (number of acres appropriated / total number of acres). By memorandum dated October 26, 1976, the Audit Division acknowledged that said apportionment should be on a total of 26.499 acres, rather than 34 acres.

5. On April 28, 1971, the joint venturers filed in the Court of Claims a claim against New York State for a greater amount of compensation for the taking. Judgment was entered October 1, 1975, upon a decision of the Court of Claims which awarded the claimants damages in the amount of \$278,125.00 with interest from October 28, 1970. Said decision stated, in part:

"The specific purpose for the purchase [of the East Fishkill property] was to develop subject for commercial uses... The evidence at trial establishes that claimant [Mannie A. Shapiro]<sup>1</sup> was in the business of, among other things, purchasing lands in and around I.B.M. complexes throughout the United States. He testified at trial that he had been attracted to subject because of its proximity to the I.B.M. complex in East Fishkill. Such properties were then developed for commercial use to take advantage of the needs of the tremendous work forces employed by I.B.M. at its plants."

6. Both the claimants and the State appealed from the aforementioned decision. The Appellate Division modified the judgment by increasing the damages to \$293,450.00, with appropriate interest. Shapiro v. New York, 61 A.D.2d 852 (3d Dept. 1978). The Court computed the award as follows:

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<sup>1</sup> Mannie A. Shapiro, the named claimant, was one of the joint venturers. See Finding of Fact "1", supra.

(a) With regard to 9.5 acres, which were rocky and rugged terrain, the Court accepted the figure set by the claimant's appraiser, namely \$325.00 per acre, as reasonable in light of the evidence. The Court stated that the value of the rugged land remained the same before and after the appropriation; therefore, no consequential damages were awarded with respect thereto.

(b) The Appellate Division computed the per acre value of the remaining 17 acres, at the time of purchase by the claimants, as \$11,580.00. (\$200,000.00 less the value of the rugged land, above, divided by 17.) It accepted the 10% per year increment as found by the Court of Claims, which increment yielded a 1970 per acre value of \$17,320.00.

(i) The Court awarded direct damages for the 13.9 acres appropriated by the State in the amount of \$240,750.00 (\$17,320.00 x 13.9).

(ii) With regard to the last 3.1 acres, the Court awarded damages of \$52,700.00. The Court of Claims had found that the after value of said acreage was the same as that of the rugged acreage since it had been capable of commercial development but after taking became landlocked. The higher court thus calculated the loss as \$17,320.00 per acre less the after value of \$325.00 per acre.

#### CONCLUSIONS OF LAW

A. That insofar as the Appellate Division awarded to petitioner severance damages to compensate for loss sustained with respect to 3.1 of the 12.6 acres which petitioner retained, in addition to direct damages for the 13.9 acres appropriated by the State, petitioner is entitled to apportionment of the cost basis of the property in accordance with the ratio 17/26.5 (acres condemned/ total acres).

B. That during 1971, petitioner East Fishkill Associates did not recognize any gain upon the State's payment to it of appropriation proceeds in the amount of \$159,750.00, plus interest, as demonstrated by the following computation:

$$\text{Allocation } \frac{17}{26.5} = .6415$$

Award received (75% of \$213,000.00)		\$159,750.00
Cost basis \$254,994.00 x .6415		<u>163,578.65</u>
Gain/loss on involuntary conversion		(3,828.65)
Interest		<u>5,617.88</u>
Total income		<u>1,789.23</u>
Allowance for partnership services	\$ 357.85	
Exemptions	<u>5,000.00</u>	
		<u>5,357.85</u>
Taxable business income		-0-

C. That the petition of East Fishkill Associates is granted and the Notice of Deficiency issued against it on March 31, 1975 is cancelled in full.

DATED: Albany, New York

STATE TAX COMMISSION

MAY 06 1983

*Rudolph A. Allen*  
PRESIDENT

*Francis R. Koenig*  
COMMISSIONER

*Mark J. Smith*  
COMMISSIONER



TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

Detached from  
PS Form 3849-A  
Oct. 1980

RETURN

2ND NOTICE

1ST NOTICE

DATE

☐ HOLD

CLAIM CHECK  
NO.

East Fishkill Associates  
c/o Schneur Genack  
30 W. 47th St.  
New York, NY 10036

Moved  
not  
concordable  
PB 5/9/83

**CERTIFIED**

**P 481 207 718**

**MAIL**

STATE OF NEW YORK

STATE TAX COMMISSION

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State of New York  
County of Albany

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East Fishkill Associates  
c/o Samuel Eisenstat  
129 East 61st Street  
New York, NY 10021

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  
31st day of May, 1983.

David Parchuck

James A. Lippard

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

## STATE TAX COMMISSION

AFFIDAVIT OF MAILING

State of New York  
County of Albany

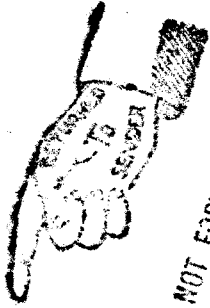
Samuel M. Eisenstat  
129 East 61st Street  
New York, NY 10021

David Paruchuk

AUTHORIZED TO ADMINISTER  
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SECTION 174

TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227



MOVED, NOT FORWARDABLE  
NEW YORK, N.Y. 10020

Samuel M. Eisenstat  
Eisenstat & Gottman, P.C.  
30 Rockefeller Plaza  
New York, NY 10020

**CERTIFIED**

P 481 207 719

**MAIL**