

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George C. & Helen T. Reeve :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Year 1978. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of November, 1984, he served the within notice of Decision by certified mail upon George C. & Helen T. Reeve, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George C. & Helen T. Reeve
Main Rd.
Aquebogue, NY 11933

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of November, 1984.

David Parchuck

James P. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

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the Year 1978. :
_____ :

AFFIDAVIT OF MAILING

State of New York }
 ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of November, 1984, he served the within notice of Decision by certified mail upon William F. Bates, the representative of the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William F. Bates
456 Griffing Ave., P.O. Box 389
Riverhead, NY 11901

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
9th day of November, 1984.

David Parchuck

James A. [Signature]
Authorized to administer oaths
pursuant to Tax Law section 174

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

November 9, 1984

George C. & Helen T. Reeve
Main Rd.
Aquebogue, NY 11933

Dear Mr. & Mrs. Reeve:

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) 690 & 722 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law 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
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
William F. Bates
456 Griffing Ave., P.O. Box 389
Riverhead, NY 11901
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
GEORGE C. REEVE AND HELEN T. REEVE	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1978.	:	

Petitioners, George C. Reeve and Helen T. Reeve, Main Road, Aquebogue, New York 11933, 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 1978 (File No. 36060).

Petitioners have waived a hearing and submit their case for decision based on the entire file. After due consideration of the file, the Commission renders the following decision.

ISSUE

Whether the gain realized by petitioners on the sale of development rights to certain farmland constitutes unincorporated business gross income within the meaning of section 705(a) of the Tax Law and is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, George C. Reeve and Helen T. Reeve, husband and wife, timely filed a joint New York State Income Tax Resident Return (Form IT-201/208) and petitioner George C. Reeve filed a New York State Unincorporated Business Tax Return (Form IT-202) for 1978. "Farmer" and "farming" were listed under the headings "occupation" and "kind of business", respectively, on these

returns. Schedule D ("Capital Gains and Losses") attached to petitioners' income tax return reflected a long-term capital gain in the amount of \$189,665.00, derived from the sale of development rights on certain land owned by Mr. Reeve.

2. On September 10, 1981, the Audit Division issued two notices of deficiency to petitioners asserting additional tax due for 1978 in the amounts of \$3,664.36 and \$3,042.18, plus interest. A Statement of Audit Changes previously issued to petitioners on June 1, 1981 explained that the former amount (\$3,664.36) represented minimum income tax asserted as due on items of tax preference (the portion of the aforementioned long-term capital gain not subject to New York personal income tax), while the latter amount (\$3,042.18) represented unincorporated business tax asserted as due on the sale of the development rights.

3. By a letter from petitioners' then duly-appointed representative, dated December 4, 1981, petitioners conceded and did not contest the minimum income tax asserted as due. Accordingly, the only item at issue involves the Audit Division's assertion that unincorporated business tax in the amount of \$3,042.18 is properly due on the sale of the development rights.

4. In 1962, petitioner George C. Reeve acquired, via a gift from his father, a parcel of land consisting of approximately 84 acres, located in the Hamlet of Aquebogue, Town of Riverhead, Suffolk County, New York. From 1962 to the present, Mr. Reeve has used his property continuously and exclusively for farming purposes, more specifically using the fertile part of the property, approximately 60 acres, for crop production. Commencing in or about 1974 or 1975, Mr. Reeve rented additional land on which he raised crops. The amount of land he rented was increased each year thereafter until about 1980, whereafter

the amount of farmland rented and crop production levels have remained approximately constant.¹

5. On or about November 29, 1977, Mr. Reeve entered into a contract of sale with Suffolk County whereby Mr. Reeve agreed to transfer to Suffolk County the development rights to approximately 71 acres of his land. The total price paid by Suffolk County for purchase of the development rights was \$231,764.36. This amount was based upon a value of \$3,263.00 per acre for the development rights, which is the difference between the property's fair market development value (\$4,132.00 per acre) and its fair market farm value (\$869.00 per acre), such figures being determined upon appraisals of the property.

6. The sale closed on May 25, 1978, with Mr. Reeve receiving \$106,764.36 at closing and \$125,000.00 on or about November 2, 1978. Mr. Reeve allocated \$42,099.00 out of the land's \$65,000.00 basis to the development rights sold, thus resulting in the reported long-term capital gain of \$189,665.00.

7. Paragraph 2 of the contract of sale between Mr. Reeve and Suffolk County defined the term "development right" as follows:

"[t]he permanent legal interest and right to permit, require to (sic) restrict the use of the premises exclusively for agricultural production as that term is presently defined in §301 of the New York State Agricultural and Markets Law, and the right to prohibit or restrict the use of the premises for any purposes other than agricultural production. By the sale of such development rights and interest the seller shall be deemed to have covenanted and agreed that the seller, and the heirs, legal representatives, successors and assigns of the seller, shall only use the premises on and after the date of delivery of the instrument of conveyance to the County of Suffolk for the purpose of such agricultural production. Such covenant shall run with the land in perpetuity." (Emphasis added.)

¹ Mr. Reeve's crop production consists of (approximately) 100 acres of potatoes, 100 acres of cabbage and cauliflower, 30 acres of sweet corn, 10 acres of grain and 20 acres of miscellaneous vegetables.

CONCLUSIONS OF LAW

A. That, during the year at issue herein, section 701(a) of the Tax Law imposed a tax upon the unincorporated business taxable income of every unincorporated business wholly or partly carried on within New York State. Section 705(a) of the Tax Law provided, in part, as follows:

"General. -- Unincorporated business gross income of an unincorporated business means the sum of the items of income and gain of the business, of whatever kind and in whatever form paid, includible in gross income for the taxable year for federal income tax purposes, including income and gain from any property employed in the business, or from liquidation of the business, or from collection of installment obligations of the business, with the modifications specified in this section."

B. That regulations in effect during the year at issue and pertaining to the above-noted statutory section provide, in pertinent part, as follows:

"...the unincorporated business gross income of an unincorporated business engaged in or being liquidated by an individual or unincorporated entity means the sum of the items of income and gain (of whatever kind and in whatever form paid) which are includible in the gross income of the individual or unincorporated entity for Federal income tax purposes for the taxable year and which are derived from the carrying on or liquidation of the business or from any source whatever connected therewith, including, without limitation, income and gain

(a) from any property of the individual or unincorporated entity, or a member thereof, employed in the business,

(b) from liquidation of the business or disposition of the assets thereof or

(c) from collection or other disposition of installment obligations of the business without regard to when such obligations were acquired." (20 NYCRR 205.1).

C. That the property upon which Mr. Reeve conducted his farming, consisting of its corporeal existence together with all of those incorporeal rights and interests included therein, was clearly employed in his farming business. His use of the land was obviously integral to the conduct of this business. That


Mr. Reeve chose to sell one of the many rights forming a part of his ownership interest in the property does not mean the gain derived therefrom did not arise out of property employed in Mr. Reeve's unincorporated business. To the contrary, such sale constituted a partial disposition of an asset employed in the business [20 NYCRR 205.1] Furthermore, there is no support for an assertion that Mr. Reeve either acquired or held the land as an investment for its potential development value. To the contrary, such property has always been employed in Mr. Reeve's farming business. Accordingly, the gain from the sale of development rights in the property employed in Mr. Reeve's unincorporated business was properly subject to the imposition of unincorporated business tax.

D. That the petition of George C. Reeve and Helen T. Reeve is hereby denied and the Notice of Deficiency dated September 10, 1981 asserting unincorporated business tax due in the amount of \$3,042.18 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 09 1984


PRESIDENT


COMMISSIONER


COMMISSIONER