

STATE OF NEW YORK
STATE TAX COMMISSION

Mirsky - Joseph
Personal & U.B.T.
16 & 16A

In the Matter of the Petition

of
Joseph Mirsky

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal & Unincorporated
Taxes under Article(s) 16 & 16-A of the
Tax Law for the (Year(s) July 31, 1958

State of New York
County of Albany

Claire A. Draves, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 21st day of January, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Joseph Mirsky
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Joseph Mirsky
532 Lefferts Avenue
Brooklyn, New York
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

21st day of January, 1971.

Linda Wilson

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
Joseph Mirsky

For a Redetermination of a Deficiency or
a Refund of Personal & Unincorporated
Taxes under Article(s) 16 & 16-A of the
Tax Law for the (Year(s) July 31, 1958

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Claire A. Draves , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 21st day of January , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sherman Heller
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sherman Heller
10 East 40th Street
New York, New York
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

21st day of January , 19 71

Linda Wilson

Claire A. Draves

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
JOSEPH MIRSKY	:	DECISION
for a Revision or Refund of Personal	:	
Income Taxes under Article 16 of the	:	
Tax Law and of Unincorporated Business	:	
Tax under Article 16A of the Tax Law	:	
for the fiscal year ended July 31, 1958	:	

Joseph Mirsky petitioned for redetermination of a deficiency of personal income tax and unincorporated business tax for the fiscal year ended July 31, 1958.

A formal hearing was held in the offices of the State Tax Commission in the City of New York on May 16, 1969.

The petitioner appeared through and was represented by Michael Bienes, CPA. The respondent was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of counsel).

FINDINGS OF FACT

1. Joseph Mirsky, the petitioner timely filed a New York State Resident Income Tax Return for the year ended July 31, 1958.

Petitioner did not file an unincorporated business tax return for that year.

2. On October 2, 1964 the Income Tax Bureau issued a notice of additional assessment under assessment number AB056511 for the year ended July 31, 1958.

The Income Tax Bureau based this notice on a determination that a condemnation award, of real property taken, was ordinary income for purposes of income tax and also subject to unincorporated business tax because the award was on property used for business purposes prior and the assessment also imposed a penalty and interest.

3. The application for revision or for refund was timely filed.

4. The taxpayers returns indicated that a "replacement fund" has been set up. The evidence established there has been no replacement of the property taken.

5. The property in question was real property held for a long term and was depreciable. Petitioner ran a wedding catering business on the property.

6. The condemnation award in the fiscal year ended July 31, 1958 was specifically excluded from capital gains by the provisions of Section 350(12) of Article 16 of the Tax Law. The property was used in trade or business.

7. The petitioner does not receive the benefits of Section 354(4) of the tax law relating to condemnation awards which are funded and used to acquire similar property. The condemnation award was not used to acquire similar property.

8. The condemnation award was for property used in petitioner's business and was income to the petitioner's unincorporated business.

9. The transaction was reported in good faith by petitioner and the failure to pay the tax was excusable.

DECISION

A. The condemnation award was subject to ordinary income tax.

B. The condemnation award was subject to unincorporated business tax.

C. The assessment is sustained and the application for revision is denied.

D. The imposition of the penalty is remanded, and statutory interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York

January 21, 1971

STATE TAX COMMISSION

Norman Gelbock

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Kerner

COMMISSIONER