

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MILTON WALKER & LILLIE WALKER  
(deceased)

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated  
Taxes under Article(s) 22 & 23 of the Business  
Tax Law for the (Year(s) 1961 & 1962 :

State of New York  
County of Albany

Martha Funaro , 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 2nd day of October , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Milton Walker &  
Lillie Walker (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Milton Walker & Lillie Walker  
c/o Thomas H. Dendy, C.P.A.  
23 Crown Street  
Kingston, 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

2nd day of October , 1972

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MILTON WALKER & LILLIE WALKER  
(deceased)

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

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated  
Taxes under Article(s) 22 & 23 of the Business  
Tax Law for the (Year(s) 1961 & 1962:

State of New York  
County of Albany

Martha Funaro , 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 2nd day of October , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Thomas H.  
Dendy, C.P.A. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Thomas H. Dendy, C.P.A.  
23 Crown Street  
Kingston, 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  
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Sworn to before me this .

2nd day of October , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**October 2, 1972**

**Milton Walker & Lillie Walker  
c/o Thomas M. Dandy, C.P.A.  
23 Crown Street  
Kingston, New York**

**Dear Sir:**

Please take notice of the **DECISION** of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **sections 690 & 722**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **4 Months** after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

**Paul B. Coburn**  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

MILTON WALKER AND LILLIE WALKER, (de- :  
ceased) :

DECISION

for a Redetermination of a Deficiency or :  
for Refund of Personal Income Taxes under :  
Article 22 and Unincorporated Business :  
Taxes under Article 23 of the Tax Law for :  
the Years 1961 and 1962. :

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The taxpayers, Milton Walker and Lillie Walker, (deceased), petitioned for a redetermination of a deficiency or for refund of Personal Income Taxes under Article 22 and Unincorporated Business taxes under Article 23 of the Tax Law for the years 1961 and 1962. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of Albany on December 15, 1969. The petitioners appeared through Thomas H. Dendy, C.P.A. The Income Tax Bureau appeared through Edward H. Best, Esq., (Solomon Sies, Esq. of Counsel).

FINDINGS OF FACT

1. The issues involved in this case are whether: (1) gains realized by the taxpayer on condemnation awards were properly excluded from unincorporated business tax and (2) interest paid to attorneys acting as representatives in the settlement of condemnation proceedings is a proper deduction in computing taxable interest paid on a condemnation award.

2. Prior to March 6, 1959, the taxpayers were the owners of land located in Kingston, New York, upon which the taxpayer, Milton Walker, conducted farming operations for over 41 years.

3. On March 6, 1959, a part of the above property was acquired by the State of New York for highway purposes, for which the State offered to the taxpayers the sum of \$92,500.00. This offer was rejected by the taxpayers.

4. Condemnation proceedings resulted in a total award to the taxpayers of \$264,400.00. Pursuant to statute, the taxpayers had received an advance payment from the State in the amount of \$55,500.00 on January 30, 1961. The remainder of the award, \$208,900.00, was paid to the taxpayers on January 30, 1962.

5. By agreement, the attorney who represented the taxpayers in the condemnation proceedings received twenty-five (25) per cent of the interest paid by the State on the condemnation award. The taxpayers, on their 1962 tax return, deducted this amount in computing taxable interest.

6. The taxpayers filed a Federal income tax return for the tax year 1959, which listed \$500.00 as income from the sale of flowers. Deductions were also listed for farm repairs and depreciation of an irrigation system.

7. On March 28, 1966 a Notice of Deficiency #2-3730353 was issued against the taxpayers in the amount of \$7,340.45 for the years in question. This deficiency was based upon a determination that: (a) the property acquired by the State was used by the taxpayers as business property, thereby subjecting the gain realized to unincorporated business tax and (b) legal expenses were capital expenditures to be subtracted from the principal amount received for the property and not to be deducted in computing taxable interest.

#### DECISION

A. The property acquired by the State from the taxpayers was property used by the taxpayers in their farming operations. The gain from the involuntary conversion of this property is, therefore, subject to unincorporated business tax.

B. The payments to the taxpayers' representative were capital expenditures and should have been deducted from the principal amount received by the taxpayers for the property. Such expenses may not be deducted in computing taxable interest.

C. The petition is, therefore, denied and the deficiency is sustained, together with such interest as may be lawfully due.

DATED: Albany, New York  
October 2, 1972

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER