

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

October 9, 1979

Estate of George Schmidt  
c/o Margaret Bohlander, Admin.  
62 Buena Vista Rd.  
New City, NY 10956

Dear Ms. Bohlander:

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, 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

Sincerely,

STATE TAX COMMISSION.

cc: Petitioner's Representative  
John H. Sidgmore, Jr.  
1 S. Main St.  
Spring Valley, NY 10977  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Estate of George Schmidt :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income Tax & UBT :  
under Article 22 & 23 of the Tax Law  
for the Years 1970 - 1972. :

State of New York  
County of Albany

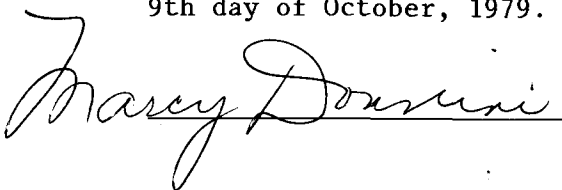
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Estate of George Schmidt, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

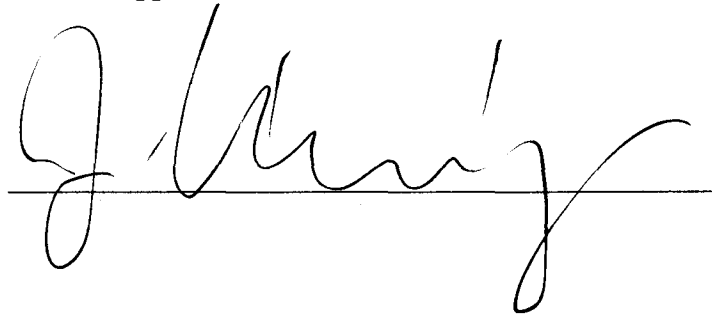
Estate of George Schmidt  
c/o Margaret Bohlander, Admin.  
New City, NY 10956

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  
9th day of October, 1979.

  
Nancy Dorsini

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

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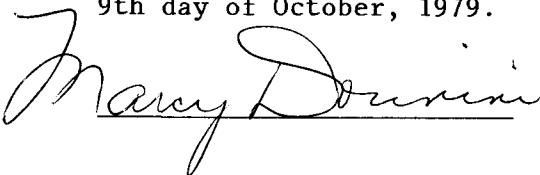
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon John H. Sidgmore, Jr. the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

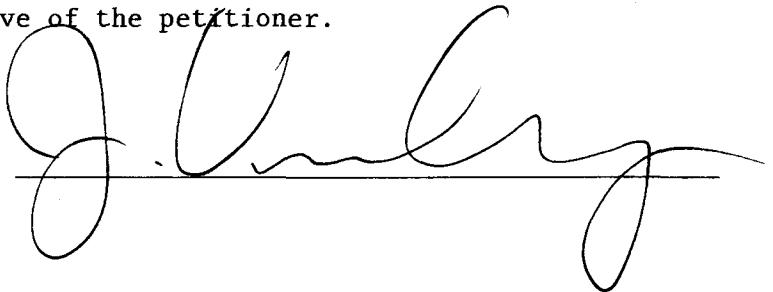
Mr. John H. Sidgmore, Jr.  
1 S. Main St.  
Spring Valley, NY 10977

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  
9th day of October, 1979.

  
Mary Durkin

  
Jay Vredenburg



2. On April 12, 1976, the Income Tax Bureau issued a Notice of Deficiency for 1970, 1971 and 1972, asserting personal income and unincorporated business taxes of \$5,271.38, a penalty of \$201.83 (pursuant to section 685(c) of the Tax Law for underestimation of tax) and a penalty of \$1,788.36 (pursuant to sections 685(a) (1) and (a) (2) of the Tax Law) for failure to file unincorporated business tax returns and pay the tax shown to be due, plus interest of \$1,270.40, for a sum of \$8,531.97. Said Notice was issued on the grounds that petitioner did not add 20% of one-half of the amount of his long-term capital gain (as provided in section 612(B) (11) of the Tax Law) to his total New York income for 1972. Also, he was liable for minimum income tax on one-half of the long-term capital gain derived from the sale of land, pursuant to section 601-A of the Tax Law. These adjustments were conceded to and are not at issue. Said Notice also held that Mr. Schmidt was subject to unincorporated business tax on interest income and gain derived from the sale of an asset connected with his farm.

3. George Schmidt was assessed a penalty for underestimation of tax for each of the years at issue, as a result of the underpayment of estimated tax measured by the tax shown on the return.

4. Mr. Schmidt was the sole proprietor of a small chicken farm in New City, New York. He derived his income from the sale of eggs and deducted therefrom the cost of the feed he purchased, his taxes, and insurance, which resulted in a net farm loss for each year at issue.

5. George Schmidt owned approximately 21.213 acres of land, of which 19.963 acres were vacant and 1.25 acres were used for his chicken farm and for his personal residence. The 1.25 acres contained a small frame house and a chicken coop with approximately 25 to 40 chickens. In prior years, a small portion of this acreage was used to maintain a personal vegetable garden and to raise hay and fodder-corn to feed his cow.

6. On May 14, 1968, petitioner sold 19.963 acres to Eden Roc Estates, Inc., subject to a survey which separated said acres from the total acreage which he owned. Petitioner continued to reside at and operate his chicken farm from the remaining 1.25 acres of land until his death on November 21, 1974.

CONCLUSIONS OF LAW

A. That the 19.963 acres sold by George Schmidt did not constitute the sale of a business asset; thus, the gain and interest income derived therefrom was not subject to unincorporated business tax.

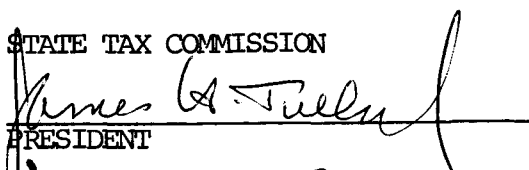
B. That the penalty asserted for underpayment of estimated tax for 1970 and 1971 (pursuant to section 685(c) of the Tax Law) was not timely, in accordance with the three-year period of limitation provided for in section 683 of the Tax Law. The penalty asserted for underpayment of estimated tax for 1972 under said section of the Tax Law was proper, but should be modified based on Conclusion of Law "A".

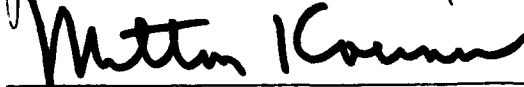
C. That the petition of the Estate of George Schmidt is granted to the extent that the unincorporated business tax, including the related penalties and interest, is cancelled in full; that the penalty asserted in accordance with section 685(c) of the Tax Law for 1970 and 1971 is also cancelled in full; that the Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued on April 12, 1976; and that, except as so granted, the petition is in all other respects denied.

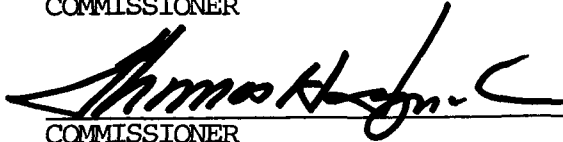
DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER