

Michael M. Mills, Jr.
v.
Department of Revenue Administration
Docket No. 5211-88A

DECISION

The "Taxpayer" appeals, pursuant to RSA 71-B:5 and RSA 77-A:14, the determination by the Department of Revenue Administration (hereafter DRA) that the Taxpayer is liable for the gain on the sale of certain business assets pursuant to RSA 77-A:1 III(d).

The Taxpayer and the DRA stipulated to the following facts in three stipulation agreements as follows:

First Stipulated Statement of Facts

Acre Ridge Associates, Inc. was incorporated in the State of New Hampshire on May 21, 1982. All of the stock was initially issued to Michael M. Mills, and no other stock has been issued. The officers and directors of the corporation are Michael M. Mills and Eleanor A. Mills. Federal and State tax returns were filed for years 1984-1987 for this entity.

The corporate purpose, as stated in the Articles of Incorporation was to purchase or in any way acquire for investment or for sale or otherwise, lands, contract for the purchase or the sale of lands, buildings, improvements, or other real estate of any kind or any interest therein.

Acre Ridge Associates, Inc. is inactive.

Second Stipulated Statement of Facts

Real Estate Plus, Inc. was incorporated on May 11, 1977 in the State of New Hampshire. The sole shareholder at all times was Michael M. Mills. The officers and directors are Michael M. Mills, Eleanor A. Mills, and Dian Mills.

Federal and State tax returns have been filed for years 1984-1987. The corporation was dissolved by the Secretary of State on October 31, 1987.

Third Stipulated Statement of Facts

Triple M Land Company, Inc., was incorporated on November 13, 1986 in New Hampshire. The sole shareholder at all times has been Michael M. Mills. The sole officer and director has been Michael M. Mills. The corporate purpose, set forth in the Articles of Incorporation, is "the purchase, sale and development of real estate and related land holdings." The corporation is currently inactive and not in good standing with the Secretary of State. No federal or state tax returns have been filed with respect to this corporation.

The Taxpayer argued the gain realized from the purchase and subsequent sale of the Town and Country Mobile Home Park was a gain realized from an investment as opposed to a gain realized from the sale of business assets. The Taxpayer, in his argument, separated his various business activities on into discrete elements and argued that the collection of rents and payment of expenses on the mobile home park in November and December of 1986 was a separate activity having no bearing on the holding of the fee simple interest in the property and the subsequent sale of that interest on December 31, 1986, to the Souhegan Valley Mobile Home Cooperative on December 31, 1986.

DRA argued the Taxpayer, in the course of his activities as a proprietor in the real estate business, acquired the fee simple interest in the mobile home park and subsequently sold it as the sale of a business asset and not as the sale of a personal investment asset. The DRA argued the history of the Taxpayer's involvement with both the operation and ownership of the mobile home park during the years 1984, 1985, and 1986 were all real estate business activities.

The Board finds the Taxpayer has failed to prove the acquisition and sale of the fee simple interest in the mobile home park was a personal investment activity. The Board finds the acquisition and sale was instead one facet of the Taxpayer's business activities as proprietor in several areas of real estate business.

The ruling is, therefore:

Appeal denied.

The Board rules as follows on the Plaintiff's request for rulings of fact:

1. Granted.
2. Granted.
3. Granted.
4. Denied.
5. Denied.
6. Denied.

The Board rules as follows on the DRA's second request for findings of facts:

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| 1. Granted. | 6. Granted. |
| 2. Granted. | 7. Granted. |
| 3. Granted. | 8. Granted. |
| 4. Granted. | 9. Granted. |
| 5. Granted. | 10. Granted. |

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

May 2, 1991

George Twigg, III, Chairman

Peter J. Donahue

Paul B. Franklin

Ignatius MacLellan

I certify that copies of the within decision have been mailed this date, postage prepaid, to Richard J. Maloney, CPA, representing the Taxpayer, to Monica Ciolfi, Esq., representing the DRA, and to the Commissioner, DRA.

Michele E. LeBrun, Clerk

May 3, 1991

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