

**New York State Department of Taxation and Finance  
Taxpayer Services Division  
Technical Services Bureau**

TSB-H-80 (520)I  
Income Tax  
March 2, 1981

STATE OF NEW YORK  
STATE TAX COMMISSION

ADVISORY OPINION

PETITION NO. I800625A

On June 25, 1980, a Petition for Advisory Opinion was received from Leon Bonfiglio, 67-12 50th Avenue, Woodside, New York 11377.

The issue raised is whether income received in exchange for a restrictive covenant entered into in connection with the sale of an unincorporated business is subject to the Unincorporated Business Income Tax imposed under Article 23 of the Tax Law.

Section 705 of the Tax Law provides that the unincorporated business gross income, the starting point in determining the unincorporated business taxable income, of an unincorporated business is "...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 liquidation of the business .... "

The consideration received in exchange for the restrictive covenant constitutes income includible in gross income for Federal income tax purposes. Such a covenant constitutes the surrender of an intangible asset, property right or right of value directly connected with the sale of the business. Inasmuch as the covenant derives its significance and value from the entire transaction, it follows that the payment therefor constitutes income or gain "...from liquidation of the business .... "

Accordingly, payment received with respect to such a restrictive covenant is includible, for the taxable years in which it is received, in unincorporated business gross income, and is thus subject to tax under Article 23 of the Tax Law.

DATED: September 16, 1980

s/LOUIS ETLINGER  
Deputy Director  
Technical Services Bureau