

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

ALBERT RUSCITO

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 16 of the  
Tax Law for the (Year(s) 1955

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

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State of New York  
County of Albany

Lynn Wilson , 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 12th day of March , 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon ALBERT RUSCITO

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Albert Ruscito  
224 Birk Shire  
Farmingville, 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

12th day of March , 1973.

Janet A. Turner

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT RUSCITO

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 16 of the  
Tax Law for the (Year(s) 1955

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

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 22nd day of February , 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Albert Ruscito

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Albert Ruscito  
17 Walnut Street  
Centereach, L.I., 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 .

22nd day of February , 1973

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**February 22, 1973**

**Albert Ruscito**  
**17 Walnut Street**  
**Centereach, L.I., New York**

**Dear Mr. Ruscito:**

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

Please take further notice that pursuant to **section 375 of**  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within **90 Days** 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,

**L. Robert Leisner**

HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
ALBERT RUSCITO : DETERMINATION  
for Revision or Refund of Personal Income :  
Taxes under Article 16 of the Tax Law for :  
the Year 1955. :

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The taxpayer applied for a revision or refund of personal income taxes under Article 16 of the Tax Law for the year 1955.

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York on June 28, 1965, before Vincent Molineaux. The taxpayer appeared personally.

ISSUE

Was \$23,024.35 received from the partnership L. Ruscito and Sons as taxpayers share of the gain on the sale of business assets income subject to normal tax rather than capital gains tax?

FINDINGS OF FACT

1. Applicant, Albert Ruscito, timely filed New York State income tax returns for the year 1955.
2. A Notice of Additional Assessment of income tax for the year 1955 was issued on April 28, 1959, against the taxpayer under File No. B596394.
3. The taxpayer applied for redetermination of the deficiencies.
4. The taxpayer was a partner in L. Ruscito and Sons.

5. The building partnership built homes in the neighborhood of West Islip and built a shopping center of eleven stores in the same area over the period of 1953 to 1955.

6. The partnership sold the shopping center after it was completed. Some rents were collected on same units during the interval of construction and sale.

CONCLUSIONS OF LAW

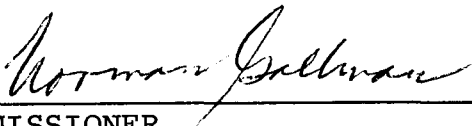
A. The partnership was in the construction business and the sale of the shopping center constituted ordinary income.

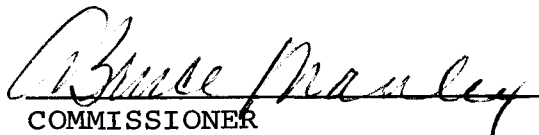
B. The application of the taxpayer is denied and the assessment of income tax is sustained.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York  
February 22, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER

STATE OF NEW YORK  
Department of Taxation and Finance  
STATE CAMPUS  
ALBANY, N. Y. 12227



~~Albert Ruscito  
17 Walnut Street  
Centerreach, L.I., New York~~

~~Seasonal Credit  
No such post office in State  
No del entry in this source~~

- ☐ Moved, left no address
- ☒ No such number
- ☐ Moved, not forwardable
- ☐ Address unknown

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 11/11/01 BY 60322 UCBAW/STP

*Albany*  
*L. Albert Ruscito*  
*Blind 4 P49*

MEMORANDUM

TO: Mr. Louis Etlinger, Chief, Review Unit  
Att: Floyd Worden  
Income Tax Bureau  
Room 104, Building #8

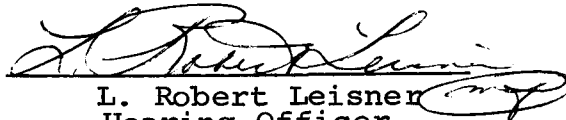
DATE: 3/5/73

FROM: Hearing Unit  
Room 214A, Building #9

RE: Albert Ruscito  
17 Walnut Street  
Centerreach, L.I., New York

SOCIAL SECURITY NO.

Please advise as to the last known address for the above  
named taxpayer.

  
L. Robert Leisner  
Hearing Officer

Taxpayer's last known address is:

224 BIRKSHIRE  
FARMINGVILLE, NEW YORK