

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS RUSCITO, JR.

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) 1965

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 Louis Ruscito, Jr.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Louis Ruscito, Jr.
19 Udall Road
West Islip, 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

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

February 22, 1973

Louis Ruscito, Jr.
19 Udall Road
West Islip, 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

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

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, Louis Ruscito, Jr., 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. B596396.
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 some 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.

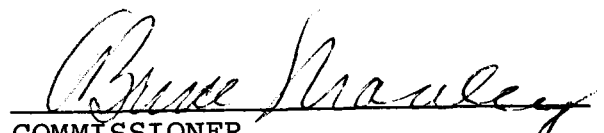
B. The application of the taxpayer is denied and the assessment of income tax is sustained.

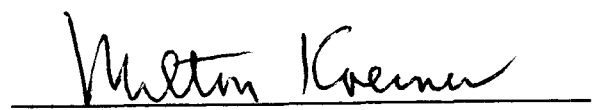
C. Pursuant to the Tax Law interest shall be added to the total amount due until paid.

DATED: Albany, New York
February 22, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
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EDWARD ROOK
SECRETARY TO
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February 22, 1973

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HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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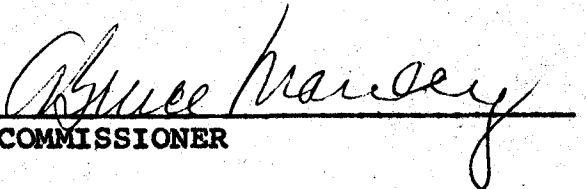
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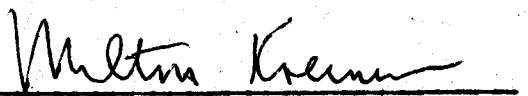
C. Pursuant to the Tax Law interest shall be added to the total amount due until paid.

DATED: Albany, New York
February 22, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

MEMORANDUM

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

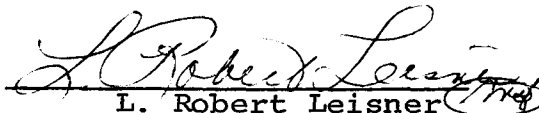
DATE: 2/28/73

FROM: Hearing Unit
Room 214A, Building #9

RE: Louis Ruscito, Jr.
19 Udall Road
West Islip, 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:

19 UDALL ROAD
WEST ISLIP, L.I. NEW YORK