

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
David & Marlene Bryce :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
& UBT under Article 22 & 23 of the Tax Law for the :  
Years 1975 & 1976.

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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 19th day of June, 1981, he served the within notice of Decision by certified mail upon David & Marlene Bryce, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David & Marlene Bryce  
314 Hoosick St.  
Troy, NY 12180

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  
19th day of June, 1981.

*Connie A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
David & Marlene Bryce :

: AFFIDAVIT OF MAILING

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of a Determination or a Refund of Personal Income :  
& UBT under Article 22 & 23 of the Tax Law for :  
the Years 1975 & 1976.

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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 19th day of June, 1981, he served the within notice of Decision by certified mail upon Jerome K. Frost 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. Jerome K. Frost  
36 First St.  
Troy, NY 12180

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  
19th day of June, 1981.

*Ann R. Heyland*

*J. Vredenburg*

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

June 19, 1981

David & Marlene Bryce  
314 Hoosick St.  
Troy, NY 12180

Dear Mr. & Mrs. Bryce:

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

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Jerome K. Frost  
36 First St.  
Troy, NY 12180  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DAVID BRYCE and MARLENE BRYCE	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1975 and 1976.	:	

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Petitioners, David Bryce and Marlene Bryce, 314 Hoosick Street, Troy, New York 12180, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1975 and 1976 (File No. 24945).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on January 6, 1981 at 9:15 A.M. Petitioners appeared by Jerome K. Frost, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

I. Whether the performance of services by petitioner David Bryce as an employee of Bryce Realty Inc. was so interrelated and integrated with his unincorporated business so as to subject his corporate salary to unincorporated business tax for years at issue.

FINDINGS OF FACT

1. Petitioners, David Bryce and Marlene Bryce, his wife, filed a New York State Combined Income Tax Resident Return for 1975 (this return is for married persons filing a joint Federal return who elect to file separate New York State

returns). A New York State Combined Income Tax Resident Return was likewise filed for 1976. Petitioner David Bryce filed unincorporated business tax returns for subject years.

2. On November 28, 1978, the Audit Division issued a Notice of Deficiency against petitioners asserting personal income tax of \$44.47, unincorporated business tax of \$2,294.00, plus interest of \$426.11, for a total of \$2,764.58. The Notice of Deficiency was based on a Statement of Audit Changes, dated August 16, 1978, which held that petitioner David Bryce's salary from Bryce Realty, Inc. and interest earned by him on mortgages were subject to unincorporated business tax. The Audit Division also held that the capital loss deduction on petitioner David Bryce's personal income tax return is limited to \$500.00 for 1975.

3. At the hearing, the petitioners stipulated that the interest earned on mortgages is subject to unincorporated business tax, and, capital loss deduction is limited to \$500.00.

4. Bryce Realty Inc. (hereinafter "corporation") was incorporated under and licensed by the State of New York as a real estate broker. The corporation's principal business activities were to list property belonging to others for sale; rent property belonging to others for a fee and appraisal real estate. The corporation was formed August 1, 1973. The founders of the corporation were petitioners, David Bryce and Marlene Bryce, who held the offices of president and secretary/treasurer, respectively.

5. Petitioner David Bryce arrived at the corporate office each morning to attend sales meetings with corporate salesmen; review completed sales with the corporate secretary to determine if all necessary documents required for

closings were properly prepared prior to submission to banks and attorneys; review possible new listings and resolve office problems as they arose.

Petitioner David Bryce placed his real estate license in escrow with the Secretary of State upon formation of the corporation, and did not personally act as a real estate salesman for the corporation. The sale of real estate was left to corporate sales managers and their subordinates.

The fee appraisals were performed by outside appraisers retained by the corporation and not done by petitioner David Bryce.

The corporation maintained its own bank accounts and books of account.

6. Petitioner David Bryce erroneously listed his business activity as sales and appraisal of real estate on his Federal Form 1040 - Schedule C. His principal unincorporated business activity was in fact an insurance business.

7. Petitioner David Bryce spent his afternoons either at the offices of his unincorporated insurance business or at the bank which maintained the books and records of his various interests in mortgages, real estate and rental property. The petitioner's unincorporated insurance business maintained its own checking account and separate books and records and was conducted from an office separate and apart from the corporation's office.

On occasion, petitioner performed appraisals for third parties, unconnected with corporate activity.

8. The bookkeeping for the corporation, unincorporated business and investments is performed separately by each entity, which maintains its own books and records. There is no commingling of funds of each of the separate entities.

9. The corporate entity exists primarily to advance its own business purposes and does not exist to advance the business purposes of the unincorporated

unincorporated insurance business and has an independent and unrelated business purpose.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner David Bryce for Bryce Realty Inc. was independent of, and not in furtherance of his unincorporated insurance business so as to constitute part of a business regularly carried on by him. Therefore, the salary received by petitioner for services rendered as an employee of Bryce Realty Inc. is exempt from unincorporated business tax in accordance with the meaning and intent of section 703 subdivision (b) of the Tax Law.

B. That the interest earned on mortgages is subject to unincorporated business tax, and capital loss deducted is limited to \$500.00 in accordance with Finding of Fact "3".

C. That the Audit Division is hereby directed to modify the Notice of Deficiency dated November 28, 1978, to be consistent with the Conclusions of Law determined hereto, and that, except as so modified, the petition is in all other respects denied. The Notice of Deficiency, as modified, is sustained, together with such interest as may be legally due.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 19 1981

PRESIDENT

COMMISSIONER

COMMISSIONER