

STATE OF NEW YORK  
STATE TAX COMMISSION

*Meyers, Bernard  
& Rita  
U-B. T.  
1971*

In the Matter of the Petition

of

BERNARD G. & RITA S. MEYERS

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business;  
Taxes under Article(s) 23 of the  
Tax Law for the (Year(s) 1963 & 1964;

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 12th day of August , 1971 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Bernard G. &  
Rita S. Meyers (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Bernard G. & Rita S. Meyers  
8365 Vernon Circle  
Williamsville, New York 14221

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 August , 1971

*Martha Funaro*

*James Wilson*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD G. & RITA S. MEYERS

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business;  
Taxes under Article(s) 23 of the  
Tax Law for the (Year(s) 1963 & 1964;

AFFIDAVIT OF MAILING  
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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 12th day of August , 19 71, she served the within  
Notice of Decision (or Determination) by (certified) mail upon John B.

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

wrapper addressed as follows: John B. Finck, Esq.  
Liberty Bank Building  
Buffalo, New York 14202

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 August , 1971.

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
BERNARD G. & RITA S. MEYERS	:	DECISION
For a Redetermination of a Deficiency	:	
or for a Refund of Unincorporated	:	
Business Taxes under Article 23 of the	:	
Tax Law for the years 1963 and 1964.	:	

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The petitioners applied for a refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1963 and 1964. A formal hearing was held on September 17, 1970, at the State Office Building, Buffalo, New York, before L. Robert Leisner, Hearing Officer.

The petitioners were represented by John B. Finck and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioners filed timely refund claims for the unincorporated business taxes for the years 1963 and 1964.

2. The refund claims were denied under (File No. 26004418) and petitioners timely demanded a formal hearing before the New York State Tax Commission.

3. Petitioners based their claim on the fact that (1) more than 80% of Mr. Meyers' income was derived from personal services, (2) capital was not a material producing factor and (3) the occupation of real estate broker is a profession within the definition of profession under section (171) of the Tax Law.

4. More than 80% of petitioners' income was derived from personal services and capital was not a material producing factor

of petitioners' income.

5. Several colleges awarded degrees in real estate. The occupation requires constant renewal courses, a knowledge of laws, regulations and taxes affecting real estate transactions. New York State imposes licensing requirements and requires an examination of persons who seek to act as real estate brokers.

DECISION

A. Real estate brokers have been in existence for many years and the Income Tax Bureau has consistently held the occupation to be subject to unincorporated business tax. "Licensing" is unsatisfactory as a test. *Teague v Graves*, 261 App. Div. 652. Specialized knowledge used in business is not a profession. *People exrel Moffett v Bates*, 276 App. Div. 38 affirmed 301 New York 597, cert. den. 340 U.S. 865. Insurance brokers are subject to unincorporated business tax, *Otis v Graves*, 259 App. Div. 957.


B. Real estate brokers are subject to unincorporated business tax.

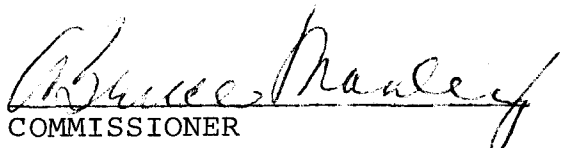
C. The petition is denied and the denial of the refund is sustained.

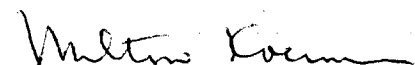
DATED: Albany, New York

*August 12, 1971.*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER