

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

NICHOLAS PLISKO and  
META PLISKO

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(x) 23 of the :  
Tax Law for the Year(s) ~~xxxxxx~~ Period(s) 1971 :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Marsina Donnini , 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 16 day of August , 1977 , she served the within  
Notice of Decision by (certified) mail upon Nicholas Plisko and  
Meta Plisko ~~xxxxxx~~ ~~representative of~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. and Mrs. Nicholas Plisko  
South Street, R.R. #1  
Manorville, New York 11949  
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~~  
~~xxxxxx~~ 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

16 day of August , 1977.

Marsina Donnini

Just Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
THE ESTATE OF WALTER PLISKO  
(HELEN PLISKO, ADMINISTRATRIX)  
and HELEN PLISKO, individually  
For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Unincorporated Business  
Taxes under Article (x) 23 of the  
Tax Law for the Year ~~(x) x x x~~ Period(s)  
1971

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Plisko, (Helen Plisko, Administratrix) and Helen Plisko, individually, ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mrs. Helen Plisko & The Estate of Walter Plisko South Street, R. R. #1 Manorsville, New York 11949 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

16 day of August, 19 77

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
NICHOLAS PLISKO & META PLISKO, THE ESTATE OF  
WALTER PLISKO (HELEN PLISKO, ADMINISTRATRIX),  
and HELEN PLISKO, individually  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Unincorporated Business :  
Taxes under Article (x) 23 of the  
Tax Law for the Year(s) ~~XXXXXX~~ 1971.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Marsina Donnini, 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 16 day of August, 1977, she served the within  
Notice of Decision by (certified) mail upon Russell O. Lange, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Russell O. Lange, CPA  
Ferrando & Lange  
678 Broadway  
Massapequa, 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 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

16 day of August, 1977.

Marsina Donnini

Janet Macch



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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**August 16, 1977**

**Mrs. Helen Plisko &  
The Estate of Walter Plisko  
South Street, R. R. #1  
Manorville, New York 11949**

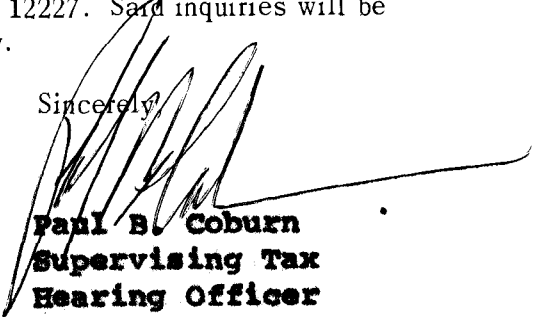
**Dear Mrs. Plisko:**

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) **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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

  
**Paul B. Coburn  
Supervising Tax  
Hearing Officer**

cc: Petitioner's Representative

Taxing Bureau's Representative



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

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

**August 16, 1977**

**Mr. & Mrs. Nicholas Plisko  
South Street, R. R. #1  
Manorville, New York 11949**

**Dear Mr. & Mrs. Plisko:**

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) **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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Paul B. Coburn  
Supervising Tax  
Hearing Officer**

cc: Petitioner's Representative  
  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
NICHOLAS PLISKO AND META PLISKO :  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law :  
for the Year 1971. :

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DECISION

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In the Matter of the Petition :  
of :  
THE ESTATE OF WALTER PLISKO :  
(HELEN PLISKO, ADMINISTRATRIX) :  
and :  
HELEN PLISKO, individually :  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law for :  
the Year 1971. :

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Petitioners, Nicholas Plisko and Meta Plisko, South Street,  
R.R. #1, Manorville, New York 11949, filed a petition for redetermina-  
tion of a deficiency or for refund of unincorporated business tax  
under Article 23 of the Tax Law for the year 1971. (File No. 14608).

Petitioners, Helen Plisko, individually and the Estate of  
Walter Plisko (Helen Plisko, Administratrix), South Street, R.R. #1,  
Manorville, New York 11949, filed a petition for redetermination of

a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1971. (File No. 14609).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1976 at 9:30 A.M. The petitioners appeared by Russell O. Lange, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

#### ISSUE

Whether gain on the sale of land owned by petitioners, Nicholas Plisko and Walter Plisko, as tenants in common, was subject to unincorporated business tax in the year 1971.

#### FINDINGS OF FACT

1. Petitioners, Nicholas Plisko and Meta Plisko, filed an amended New York State resident income tax return for 1971. They listed income of \$60,499.84 from the sale of capital assets. They did not file an unincorporated business tax return for 1971.

2. Walter Plisko and Helen Plisko filed an amended New York State resident income tax return for the year 1971. They listed \$67,283.47 as income from the sale of capital assets. They did not file an unincorporated business tax return for the year 1971.

3. The Income Tax Bureau did not put into evidence any assessment of unincorporated business tax against petitioners, Nicholas Plisko and Meta Plisko. However, the Income Tax Bureau

did put into evidence an assessment issued against petitioners on January 26, 1976 imposing minimum tax for the year 1971 based on the sale of a tax preference item and this was conceded by petitioner at the hearing.

4. On March 29, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, the Estate of Walter Plisko (Helen Plisko, Administratrix) and Helen Plisko, individually, imposing additional income tax and unincorporated business tax for the year 1971, upon the grounds that the sale of property was a tax preference item subject to minimum income tax and the gain and interest on installments of the sale or exchange of business assets is subject to unincorporated business tax. The assessment consisted of \$6,057.26, plus penalty and interest and accordingly a Notice of Deficiency was issued totalling \$9,120.44. The minimum income tax issue was conceded by petitioners at the hearing.

5. The two brothers, Nicholas Plisko and Walter Plisko, operated a joint farming business on two pieces of property separated by a highway and owned individually by each. They owned the piece of land in issue as tenants in common and this was partially contiguous to the land owned by Walter Plisko.

6. The petitioners, Nicholas Plisko, Meta Plisko, the Estate of Walter Plisko (Helen Plisko, Administratrix) and Helen Plisko, individually, offered no documentary or other substantial evidence that the land in issue was not used in their unincorporated business of farming.



CONCLUSIONS OF LAW

A. That the land in issue owned by petitioners was used in connection with their unincorporated business of farming and, therefore, the gain on the sale of the land is subject to the unincorporated business tax.

B. That, however, since no Notice of Deficiency imposing unincorporated business tax was offered in evidence against Nicholas Plisko and Meta Plisko, therefore, their gain on the sale of the land cannot in this proceeding be held to be subject to the unincorporated business tax.

C. That the petition of Nicholas Plisko and Meta Plisko is granted to the extent indicated in Conclusion of Law "B", supra, and that the Notice of Deficiency issued January 26, 1976 relating to personal income tax only is sustained.

D. That the petition of the Estate of Walter Plisko (Helen Plisko, Administratrix) and Helen Plisko, individually, is denied and the Notice of Deficiency issued March 29, 1976 is sustained.

DATED: Albany, New York  
August 16, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER