

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN A. VALVANO

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) 1967 and 1968:

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

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 1st day of December, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon JOHN A. VALVANO

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. John A. Valvano
83-03 Commonwealth Blvd.
Bellerose, New York 11426

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

1st day of December, 1972

Franka Ferraro

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN A. VALVANO

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) 1967 and 1968

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

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 1st day of December , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon JOSEPH J. FRANCO

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

wrapper addressed as follows: Mr. Joseph J. Franco
69 E. Nicholai Street
Hicksville, New York 11801

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

1st day of December , 19 72

Maitha Moore

Lynn Wilson



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
December 1, 1972

Mr. John A. Valvano
83-03 Commonwealth Blvd.
Bellerose, New York 11426

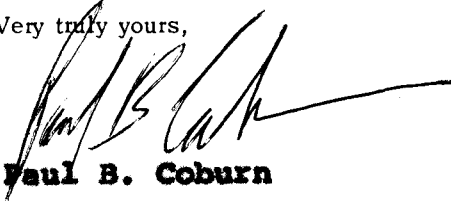
Dear Mr. Valvano:

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

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 months** 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,


Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN A. VALVANO	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967 and 1968.	:	

Petitioner, John A. Valvano, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967 and 1968. (File No. 8-14401073). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on September 25, 1972, at 2:45 P.M. Petitioner appeared by Joseph Franco, P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did petitioner, John A. Valvano's activities as a real estate salesman during the years 1967 and 1968 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, John A. Valvano, filed New York State income tax resident returns for the years 1967 and 1968. He listed his occupation as "real estate broker" on said returns. He did not file New York State unincorporated business tax returns for said years.

2. On January 18, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, John A. Valvano, imposing unincorporated business tax in the sum of \$792.83 upon the income

received by him from his activities as a real estate salesman during the years 1967 and 1968. It also imposed a penalty pursuant to section 685(a) of the Tax Law in the sum of \$198.21 for failure to file unincorporated business tax returns for said years. It further imposed a penalty pursuant to section 685(c) of the Tax Law in the sum of \$45.57 for failure to file declarations of estimated unincorporated business tax for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,136.75.

3. Petitioner, John A. Valvano, was a real estate salesman during the years 1967 and 1968. He sold homes for one home builder in 1967 and for three home builders in 1968. He sold homes for no more than one builder at any given period of time. He sold the homes being constructed by a builder on the builder's tract. The builders furnished, at no charge, a model home garage to be used as an office. The builders also furnished office equipment, telephones, sales materials, advertising and liability insurance at no cost to petitioner. The builders furnished and paid other real estate salesmen, who were needed to help the petitioner cover the job. He was required to cover the site for specific numbers of hours set by the builders. He did not have any employees of his own.

4. Petitioner, John A. Valvano, was a New York State licensed real estate broker during the years 1967 and 1968. He did not hold himself out to the public as a real estate broker.

5. Petitioner, John A. Valvano, received gross commissions for the sale of real estate totalling \$18,363.00 in 1967 and \$21,894.00 in 1968. In 1967 he received \$17,162.80 from Madison Farms, Inc. and \$1,200.18 from an undisclosed source. In 1968 he received \$2,066.21 from Madison Farms, Inc., \$14,908.90 from Baygreen at Oceanside, Inc. and \$4,919.31 from Schreiber Properties, Inc.

All three corporations were builders for whom he worked. These builders did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. He listed his income and expenses on Schedule "C" of his Federal income tax returns. He deducted business expenses totalling \$3,510.00 in 1967 and \$3,882.00 in 1968. These business expenses consisted substantially of an allocation of thirty three and one-half percent of his home expenses and seventy percent of his automobile expenses to business activities. He filed a form for a self-employed retirement deduction with his 1968 Federal income tax return.

6. Petitioner, John A. Valvano, had a written commission agreement with Baygreen at Oceanside, Inc. The agreement provided that he was to receive a commission of three-fourths of one percent for selling homes. It further provided that he was to receive a \$200.00 a week draw against commissions and that, in the event that the draw exceeded earned commissions, it was to be considered a salary for coverage of the job. The agreement could be terminated at any time by the builder. He had similar agreements with the other builders for whom he rendered services.

7. Petitioner, John A. Valvano's New York State income tax returns for the years 1967 and 1968 were prepared by his brother who was an accountant and who was familiar with his business affairs.

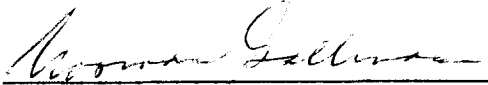
CONCLUSIONS OF LAW

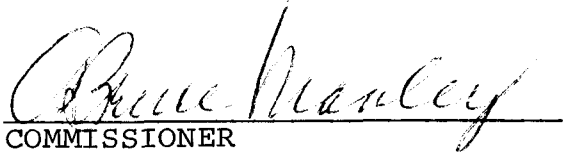
A. That the income received by petitioner, John A. Valvano, from his activities as a real estate salesman during the years 1967 and 1968, constituted compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.


B. That the petition of John A. Valvano is granted and the Notice of Deficiency issued January 18, 1971 is cancelled.

DATED: Albany, New York
December 1, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER