

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PATRICK J. BURKE

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) 1965, 1966 &
1967

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 19th day of July , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Patrick J. Burke

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

wrapper addressed as follows: Patrick J. Burke
175 Colonial Avenue
Albany, New York 12208

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

19th day of July , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PATRICK J. BURKE

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) 1965, 1966 & :
1967

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 19th day of July , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon John V. O'Connor,
C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: John V. O'Connor, C.P.A.
45 Colvin Avenue
Albany, New York 12206

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

19th day of July , 1973

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN,  PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 19, 1973

Patrick J. Burke
175 Colonial Avenue
Albany, New York 12208

Dear Mr. Burke:

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

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner

Enc.

HEARING OFFICER

cc: Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PATRICK J. BURKE : DECISION
for a Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1965, 1966 and 1967. :

Patrick J. Burke petitioned for a redetermination of a deficiency in unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966 and 1967.

A formal hearing was held at the offices of the State Tax Commission, Albany, New York on January 19, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by John V. O'Connor, C.P.A. and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Was the taxpayer, a real estate broker, subject to unincorporated business tax and penalty for the years in issue.

FINDINGS OF FACT

1. Petitioner, Patrick J. Burke, timely filed New York State income tax returns for the years 1965, 1966 and 1967, but did not file unincorporated business tax.
2. A Notice of Determination of deficiencies in unincorporated business tax and penalty for the years 1965, 1966 and 1967 was issued on May 25, 1970 against Patrick J. Burke under File No. 78824591. The taxpayer petitioned for redetermination of the deficiencies.

3. The taxpayer based on advice of counsel subsequent to filing his income tax returns, had learned of the necessity of filing unincorporated business tax returns for his real estate broker's income. The taxpayer did not dispute the assertion of unincorporated business tax, but he disputed the assertion of any penalty.

4. The taxpayer read the tax instructions and believed that he was a professional and was exempt from an unincorporated business tax return.

5. The taxpayer had no other knowledge of the requirement of filing an unincorporated business tax return and other realtors never spoke to him about this because most realty brokers were incorporated.

CONCLUSIONS OF LAW

A. The taxpayer, a realtor, believed he was a professional exempt from filing an unincorporated business tax return. The taxpayer acted in good faith. Bernard G. and Rita S. Meyers, STC, August 12, 1971.

B. The determination of the deficiency in unincorporated business tax under File No. 78824591 is sustained.

C. The penalty is cancelled.

D. Pursuant to the Tax Law, interest is added to the total amount due until paid.

DATED: Albany, New York
July 19, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER