

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES P. and FRANK J. CLARK

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) 1962 through:
1966.

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 14th day of January, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon James P. and
Frank J. Clark (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Messrs. James P. and Frank J. Clark
127 Nassau Avenue
Brooklyn, 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 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

14th day of January, 1974.

Martha Funaro
Joyce S. Van Patten

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of January, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sidney Meyers, Esq.

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

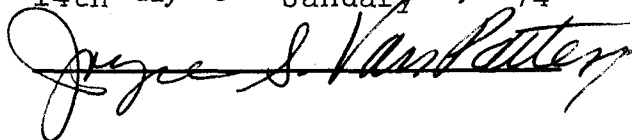
51 Chambers Street
New York, New York 10007

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Sworn to before me this

14th day of January, 1974.







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

Mario A. Procaccino,
~~XXXXXXXXXXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
January 14, 1974

Messrs. James P. and Frank J. Clark
127 Nassau Avenue
Brooklyn, New York

Dear Messrs. Clark:

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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JAMES P. AND FRANK J. CLARK	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1962 through 1966.	:	

James P. and Frank J. Clark filed petitions pursuant to sections 722 and 689(b) of the Tax Law for a redetermination of a deficiency, issued under date of September 30, 1968, in unincorporated business taxes under Article 23 of the Tax Law for the years 1962 through 1966. A hearing was duly held at the offices of the State Tax Commission, 80 Centre Street, New York City on March 3, 1970, before Nigel G. Wright, Hearing Officer. The petitioners were represented by Sidney Meyers, Esq. The Income Tax Bureau was represented by Edward H. Best, Esq., appearing by Alexander Weiss, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether rental income from real property owned by petitioners should be included in the income of their unincorporated business of real estate brokerage, management and appraising and insurance sales. There is no dispute as to the computation of the deficiencies.

FINDINGS OF FACT

1. The petitioners are cousins. They formed their partnership in 1947. The offices of the partnership were at 127 Nassau Avenue, Brooklyn, New York.

The petitioners used a letterhead stating their business to be real estate, insurance and mortgages. A certificate for doing business under an assumed name was filed in Kings County. Both cousins had to sign each check issued by the partnership. The partnership engaged in insurance brokerage, real estate management, and real estate brokerage which activities are conceded to be subject to unincorporated business tax. The income from these activities, however, is too small to be subject to unincorporated business tax.

2. James P. Clark, the older of the cousins, has been in business as a sole proprietor since 1919 mainly in Queens and Nassau Counties as a real estate broker and appraiser. He did business as the J.P. Clark Company. He has a real estate brokers license and an insurance brokers license. In prior years, he did a very large volume of real estate and appraisal work for the City of New York and for certain insurance companies. He does similar work now but on a much smaller scale. He maintains records and accounts separate from the partnership. He has some engineering background and he estimates construction costs for buildings.

3. Frank J. Clark, slightly younger than his cousin, was a bookkeeper and rent collector for his cousin prior to the time he became a partner in 1947. He had neither a real estate brokers nor an insurance brokers license. He made no investment at the time of becoming a partner. His activities as a partner are largely confined to bookkeeping and rent collecting.

4. All of the business of each petitioner individually and as a partner was done out of the same office. One woman was employed there and she worked on all aspects of the petitioners' activities. The records and bank accounts for each type of business activities were kept separately.

5. Each of the petitioners owned some properties individually and each maintained separate records and accounts for these properties.

6. In the years 1962 through 1966, the petitioners owned 35 pieces of property. Twenty-seven of the properties were industrial in character. Most had been purchased between 1947 and 1952. Two of the properties were purchased after 1961. No properties were sold during the 1962 to 1966 period. The Clark's were not dealers in real property.

7. The taxpayers would purchase vacant land in Brooklyn and Queens, erect one-story industrial structures, mortgage them and rent them out. All activity was done in the name of "James P. Clark and Frank J. Clark" with no explicit reference to a partnership. Both cousins would sign all legal documents. The vacant land would be purchased at about \$1.75 a front foot. Improvements would cost about \$8.00 or \$9.00 a front foot. From 80% to 95% of the properties purchased were improved by the Clark's. Improvement would take up to six months. No improved industrial site has ever been sold.

8. The Clark's never purchased property which was listed with them as brokers.

9. The deficiencies asserted are as follows: 1962, \$1,050.79; 1963, \$1,189.68; 1964, \$3,312.86; 1965, \$1,912.96; 1966, \$1,604.09, all with interest. Payment of the deficiencies, with interest, was made on January 24, 1969, in the following amounts: 1962, \$1,414.34; 1963, \$1,529.90; 1964, \$4,061.50; 1965, \$2,230.47; 1966, \$1,774.09.

CONCLUSIONS OF LAW

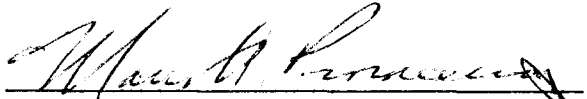
The petitioners' activities as real estate brokers and as real estate investors are so interrelated and integrated that they cannot be separated and must be considered as one business.

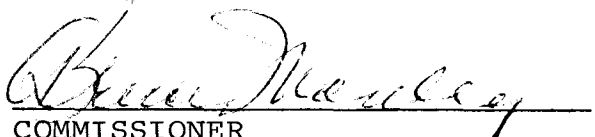
DECISION

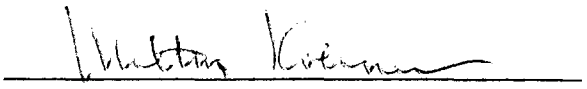
The petition is denied. The deficiencies are found correct. As said deficiencies have been paid, nothing more is due.

DATED: Albany, New York
January 14, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER