

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
ALFRED J. FASOLINO, JR., PETER M. FASOLINO and JOHN FASOLINO,
individually and as co-partners :
d/b/u the firm name and style of : AFFIDAVIT OF MAILING
THE NEWKIRK ROGERS CO. : OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

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) 1964, 1965 and
1966.

State of New York
County of Albany

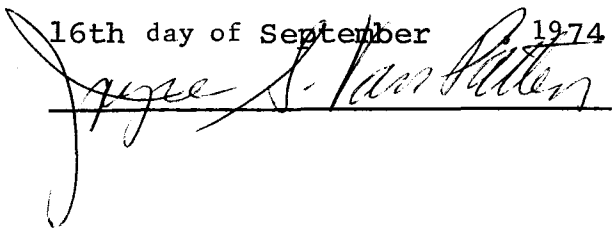
Janet Mack being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of September , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Alfred J. Fasolino, Jr.

(XXXXXXXXXX) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Alfred J. Fasolino, Jr.
% The Newkirk Rogers Co.
53 North Park Avenue
Rockville Center, New York 11570
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
(X) petitioner herein and that the address set forth on said wrapper is the last
known address of the (XXXXXXXXXXXXXXXXXXXX) petitioner.

Sworn to before me this

16th day of September 1974


James S. Van Patten


Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
ALFRED J. FASOLINO, JR., PETER M. FASOLINO and JOHN FASOLINO,
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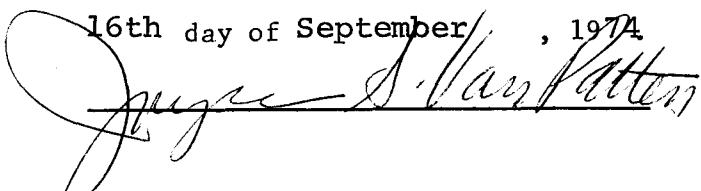
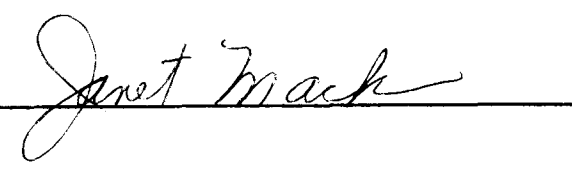
Janet Mack , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of September , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Peter M. Fasolino

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Peter M. Fasolino
% The Newkirk Rogers Co.
53 North Park Avenue
Rockville Center, New York 11570
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Sworn to before me this

16th day of September , 1974

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
ALFRED J. FASOLINO, JR., PETER M. FASOLINO and JOHN FASOLINO

individually and as co-partners
d/b/u the firm name and style of :
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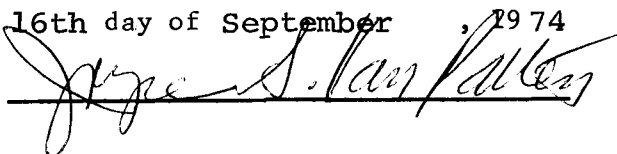
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Notice of Decision (or Determination) by (certified) mail upon John Fasolino

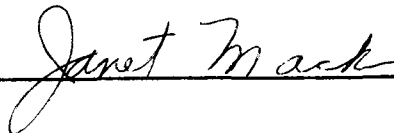
(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. John Fasolino
% The Newkirk Rogers Company
53 North Park Avenue
Rockville Center, New York 11570
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known address of the (~~representation of the~~) petitioner.

Sworn to before me this

16th day of September , 19 74





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

ALFRED J. FASOLINO, JR. ^{of} PETER M. FASOLINO and JOHN FASOLINO

individually and as co-partners
d/b/u the firm name and style of :

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Notice of Decision (or Determination) by (certified) mail upon Martin J. Epstein,
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: Martin J. Epstein, C.P.A.

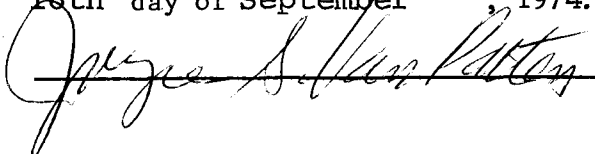
550 Cookman Avenue
Asbury Park, New Jersey 07712

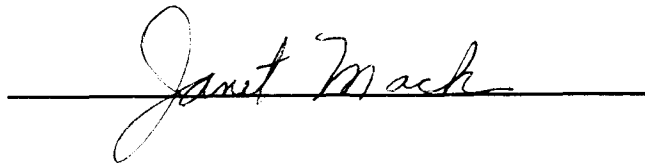
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16th day of September , 1974.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

ALFRED J. FASOLINO, JR., PETER M. FASOLINO and JOHN FASOLINO,

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of September, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Stanley L. Cinnamon,
C.P.A.

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

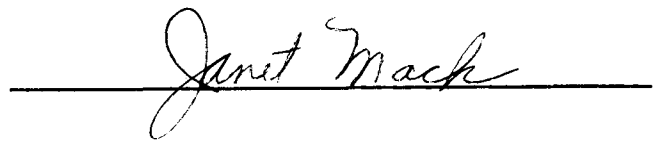
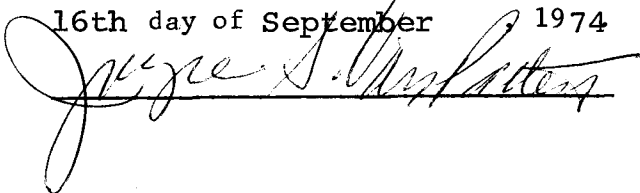
wrapper addressed as follows: Stanley L. Cinnamon, C.P.A.
Rudolf, Cinnamon & Calafato
550 Cookman Avenue

Asbury Park, New Jersey 07712
and by depositing same enclosed in a postpaid properly addressed wrapper in a
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Sworn to before me this

16th day of September 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
Mario A. Procaccino
~~XXXXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York

September 16, 1974

Mr. Alfred J. Pasolino, Jr.
% The Newkirk Rogers Co.
53 North Park Avenue
Rockville Center, New York 11570

Dear Mr. Pasolino:

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

Please take further notice that pursuant to
Section (a) **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



MILTON KOERNER

457-2655, 6, 7

ADDRESS YOUR REPLY TO

September 16, 1974

Mr. Peter M. Fasolino
% The Newkirk Rogers Co.
53 North Park Avenue
Rockville Center, New York 11570

Dear Mr. Fasolino:

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 relating 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

cc Petitioner's Representative
Law Bureau



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
~~SEYMOUR K. KATZMAN~~
Mario A. Procaccino
~~SEYMOUR K. KATZMAN~~, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
September 16, 1974

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% The Newkirk Rogers Company
53 North Park Avenue
Rockville Center, New York 11570

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HEARING OFFICER

cc Petitioner's Representative
Law Bureau

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In the Matter of the Petition	:	
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of	:	
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ALFRED J. FASOLINO, JR., PETER M.	:	
FASOLINO and JOHN FASOLINO,	:	
individually and as co-partners	:	DECISION
d/b/u the firm name and style of	:	
	:	
THE NEWKIRK ROGERS CO.	:	
	:	
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1964, 1965 and 1966.	:	

Alfred J. Fasolino, Jr., Peter M. Fasolino, and John Fasolino, individually and as co-partners d/b/u the firm name and style of The Newkirk Rogers Co., filed a petition under sections 722 and 689 of the Tax Law for a redetermination of a deficiency issued February 19, 1968, in the amount of \$4,003.08, plus interest of \$345.42 for a total of \$4,348.50 for unincorporated business taxes under Article 23 of the Tax Law for the years 1964, 1965, and 1966.

A hearing was duly held on June 6, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioners were represented by Stanley L. Cinnamon, C.P.A. of Rudolf, Cinnamon & Calafato of Asbury Park, New Jersey. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the petitioner, a partnership with interests chiefly in real estate, is engaged in an unincorporated business taxable under section 703 of the Tax Law by virtue of the volume of its transactions.

FINDINGS OF FACT

1. The Newkirk Rogers Co., the petitioner, was organized in January, 1963 by three brothers; Alfred J. Fasolino, Jr., Peter M. Fasolino, and John Fasolino. Its address is 85 Windham Road, Rockville Center, Long Island. It has an office there and employs one secretary. Its immediate purpose was to hold an apartment house in Tuckahoe, Westchester County, New York, which the brothers had received in liquidation (under section 333 of the Internal Revenue Code) from the Newkirk Rogers Corporation. The corporation had been formed in the late 1950's by their father and uncle to hold real estate, but the three brothers had owned the stock since 1958.

2. In July, 1964, the firm sold the Tuckahoe apartment house for \$60,000 cash and a mortgage of \$160,000, which it chose to report on the installment basis. It reported income on its partnership return as follows: \$24,603.34 in 1963, \$38,955.28 in 1964 and \$26,653.83 in 1965. It reported interest income on the mortgage of \$6,684.08 in 1965 and \$5,117.23 in 1966.

3. In 1966, the firm purchased and sold land in Hempstead, New York for a loss.

4. The firm had income from corporate stock which it had purchased with the proceeds of the sale of the Tuckahoe property. Dividends amounted to \$157.50 in 1963, \$2,875.00 in 1964, \$5,305.00 in 1965. Income on disposition of these securities amounted to a gain of \$5,427.52 in 1965 and of \$33,792.93 in 1966. The firm does not seem to have owned more than six issues and it held them.

5. The firm received payments from other partnerships of \$1,287.00 in 1965 and \$5,606.60 in 1966. These partnerships were the Hendrik Realty Company and the Lawrence Plaza Co. both of 53 N. Park Avenue, Rockville Center, New York and one owning an apartment building on 37th Street in Manhattan and the other owning a garden apartment in Lawrence, Long Island. Both were tenencies in common, rather than partnerships with Newkirk Rogers Co. owning a 50% interest. The other owners were the cousins of the Fasolino's. In 1967, Newkirk Rogers Co, purchased the remaining 50% interest and became the sole owners of the property.

6. The firm received management fees as follows: \$2,070.00 in 1964, \$9,780.00 in 1965 and \$8,280.00 in 1966. These were from the management of the properties of Hendrik Realty and the Lawrence Plaza Co. As managers, they leased apartments and arranged for janitorial services.

7. Petitioner filed New York State partnership returns (form IT-204) for each of the years under review. It did not report as an unincorporated business.

8. The partnership has never filed tax returns as an "association" taxable as a corporation or been so treated by the Federal authorities.

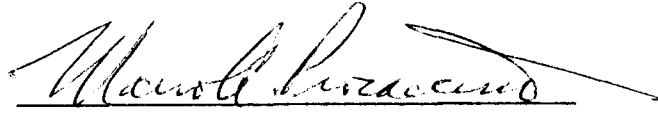
CONCLUSIONS OF LAW

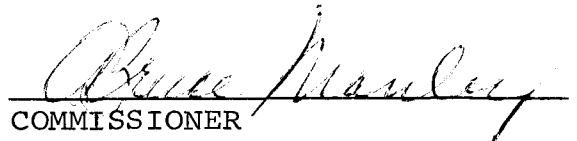
The mere volume of activities, which here is quite small, and the opening of an office with one secretary does not incur the unincorporated business tax. The petitioners are exempt as engaged in the holding, leasing and managing of real property for its own account under sections 703(d) and 703(c) of the Tax Law.

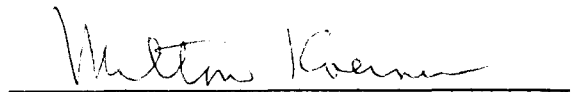
The deficiency is erroneous and is cancelled in its entirety.

DATED: Albany, New York
September 16, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER