

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BARTOLOMEO TARANTO

:
:
:
AFFIDAVIT OF MAILING
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) 1963 & 1964 :

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 3rd day of May , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Bartolomeo Taranto

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

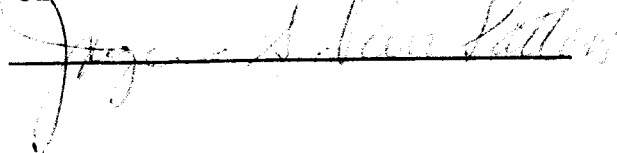
wrapper addressed as follows: Mr. Bartolomeo Taranto
292 Isabella Avenue
Staten Island, New York 10306

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

3rd day of May , 1974





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BARTOLOMEO TARANTO

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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) 1963 & 1964 :

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 3rd day of May , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Murray Appleman, Esq.

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


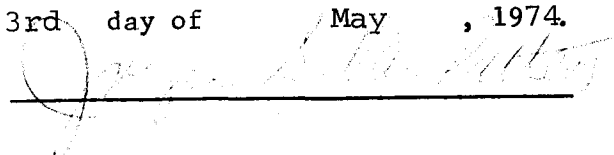
8 Buttercup Drive
Blauvelt, New York

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Sworn to before me this

3rd day of May , 1974.



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
Mario A. Procaccino
~~XXXXXXXXXX~~, 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

May 3, 1974

Mr. Bartolomeo Taranto
292 Isabella Avenue
Staten Island, New York 10306

Dear Mr. Taranto:

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,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BARTOLOMEO TARANTO	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1963 and 1964.	:	

Bartolomeo Taranto filed a petition under sections 722 and 689 of the Tax Law for the redetermination of a deficiency issued February 20, 1967, in the amount of \$2,160.73 plus interest of \$314.44 for a total of \$2,475.17 for unincorporated business tax under Article 23 of the Tax Law for the years 1963 and 1964.

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 petitioner was represented by Murray Appleman, Esq., of Blauvelt, New York. 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 income of a real estate broker should include salaries received from construction corporations and gain from the sale of investment real estate.

FINDINGS OF FACT

1. Petitioner at onetime was a New York City fireman. He began building homes on a part-time basis in the late 1950's. He obtained a real estate brokers license in 1960. He has also become an officer of two corporations, the Nastasi Building Corp. and the Taranto Construction Co., Inc.

2. Petitioner is a real estate broker on Staten Island doing business under the name of Taranto Realty. In 1963, its income was not large enough to incur an unincorporated business tax. In 1964, it filed a return and paid a tax. It handles resales of property but primarily concentrates on selling new construction. The new construction it sells is primarily that of the Nastasi and Taranto corporations, but also that of other corporations. The firm sells between 75% and 90% of the houses built by Nastasi Building Corp. and Taranto Construction Co., Inc. Other brokers handle the remainder. One key salesman, John Siracusa, is responsible for building up these sales. He obtained his own brokers license in 1963 and became a partner in 1965. The firm employs three or four other salesmen. On new construction, the firm received a flat fee of \$400.00 to \$500.00 instead of the usual brokers commission of 5% or 7%.

3. Petitioner and a Mr. Frank Nastasi are the principal stockholders of Nastasi Building Corp., which was organized in 1961. This corporation is engaged in building one and two family homes on subdivision sites. Mr. Nastasi is the president and acts as the construction supervisor on job sites. Petitioner

is treasurer and has duties including: buying all land and materials; attending real estate closings; arranging financing; subcontracting the work and arranging deliveries of materials and the arrival of the subcontractors and billing for the work. Petitioner received salaries of \$3,555.00 in 1963 and \$13,110.00 in 1964 from this corporation.

4. Petitioner was also an officer of Taranto Construction Co., Inc., organized in 1959 and also located in Staten Island. He and his brother were each fifty percent shareholders. In later years, another person, Andrew Miro was brought in as an equal shareholder. He received a salary in 1963 of \$9,400.00. This did the same type of business as Nastasi Building Corp.

5. The brokerage business and the two corporations all did business from the same address.

6. Mr. Taranto sold some parcels of land in these years. This had been purchased as an investment. Some of the land was unimproved. Other land was purchased in co-ownership with other people not connected with his other activities. He had owned five parcels himself and two others in co-ownership. The average holding period was three years. He did no construction on these parcels. Some, but not all, were sold through the brokerage firm.

CONCLUSIONS OF LAW

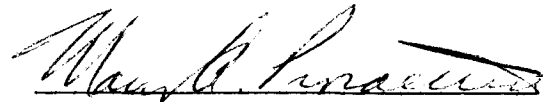
Neither the salaries nor the investment gains are part of unincorporated business income. The salaries were obtained from corporations having substantially different beneficial

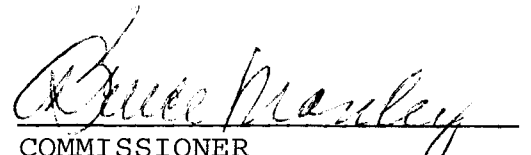
interests than the real estate business and petitioner's services for them were substantially different from the duties of an ordinary real estate broker.

The deficiency is erroneous and is cancelled in full.

DATED: Albany, New York
May 3, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER