

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JOSEPH PENNISE

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 (8) 23 of the  
Tax Law for the Year(s) 1971, 1972 :  
and 1973

State of New York  
County of Albany

MARY GROFF

, 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 23rd day of December , 1975, she served the within

Notice of Decision (~~XXXXXXXXXXXX~~) by (certified) mail upon Joseph Pennise

(~~XXXXXXXXXXXX~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Joseph Pennise  
315 Victor-Egypt Road  
Victor, N.Y. 1464

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 (~~XXXXXXXXXXXX~~  
~~XX~~) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (~~XXXXXXXXXXXX~~) petitioner.

Sworn to before me this

23rd day of December , 1975.

Janet Mack

Mary Groff

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH PENNISE

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 (x) 23 of the  
Tax Law for the Year(s) 1971, 1972  
and 1973

State of New York  
County of Albany

MARY GROFF

, 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 23rd day of December, 1975, she served the within

Notice of Decision (~~or Determination~~) by (certified) mail upon **Melvin Gumbiner, CPA**

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid


wrapper addressed as follows: **Melvin Gumbiner, CPA**  
**405 Reynolds Arcase**  
**Rochester, New York 14614**

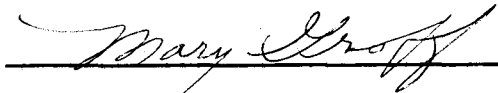
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

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

23rd day of December, 1975.







STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright  
Mr. Leisner  
Mr. Coburn  
(518) 457-3850

**DATED:** Albany, New York  
**December 23, 1975**

**Mr. Joseph Pennise**  
**315 Victor-Egypt Road**  
**Victor, N.Y. 14564**

**Dear Mr. Pennise:**

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,

**PAUL E. COBURN**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOSEPH PENNISE	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1971, 1972 and 1973.	:	

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Petitioner, Joseph Pennise, 315 Victor - Egypt Road, Victor, New York 14564, 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 1971, 1972 and 1973. (File No. 3-42280470). On May 15, 1975, petitioner, Joseph Pennise informed the State Tax Commission that he waived a formal hearing and requested that the State Tax Commission render a decision upon the evidence contained in the file. The State Tax Commission renders the following decision based upon the information contained in the aforesaid record.

ISSUE

Whether income received from the sale of real property sold by petitioner, Joseph Pennise, during the years 1971 and 1972 was business related and therefore subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Joseph Pennise, filed New York State unincorporated business tax returns for the years 1971, 1972 and 1973.

2. On December 23, 1974, the Income Tax Bureau issued a Statement of Audit Changes imposing additional unincorporated business tax for the years 1971, 1972 and 1973 upon gains realized by the sale of land owned by petitioner, Joseph Pennise, in the years 1971 and 1972. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued in the sum of \$12,546.24.

3. In 1963, petitioner, Joseph Pennise, purchased 14 acres of land in Victor, New York. One acre contained a house which he reconstructed and used for his personal residence. He used two of the acres for a garden store and landscaping business which he owned and operated. The remaining property was left vacant.

4. In 1965, petitioner, Joseph Pennise, sold one acre of the land through a real estate broker, James Pennington. At that time he informed the broker that he was interested in selling more of his property but that he didn't want a formal listing. Two acres of the land were sold in 1971 to the Shell Oil Company through the efforts of Mr. Pennington. He continued to operate his business and reside on the remaining acreage until 1972. In that year, Scutti Pontiac Company bought the remaining acreage including the residence and business. He reported the sale as an installment basis.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Joseph Pennise, in the year 1971 from Shell Oil Company and in the year 1972 from Scutti Pontiac Company for acquisition of real property constituted income from the use of an asset connected

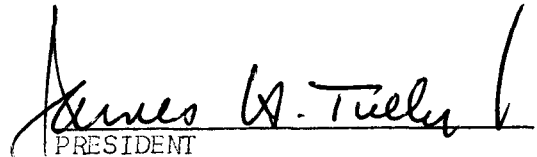
with his garden store and landscaping business and not income received solely by reason of holding, leasing or managing real property exempt from imposition of unincorporated business tax in accordance with the meaning and intent of section 703(e) of the Tax Law and 20 NYCRR 281.2Q, 23-C.

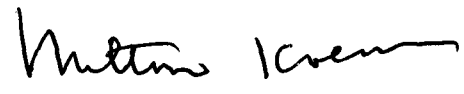
B. That the aforesaid real estate transactions of petitioner, Joseph Pennise, during the years 1971 and 1972 constituted the carrying on of an unincorporated business and the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Joseph Pennise is denied and the Notice of Deficiency issued December 23, 1974, is sustained.

DATED: Albany, New York  
December 23, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JULIUS PINE and PEARL PINE

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business :  
Taxes under Article ~~(2)~~ 23 of the  
Tax Law for the Year ~~(3)~~ 1970 :

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

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 15th day of July , 19 75, she served the within  
Notice of Decision (~~of Taxation~~) by (certified) mail upon Julius Pine and  
Pearl Pine (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. & Mrs. Julius Pine  
282 Marion Street  
Danbury, Connecticut  
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

15th day of July

1975

*James S. Van Patten*

*Janet Mack*