

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT F. ROTH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(ss)~~ 23 of the :
Tax Law for the Year(s) ~~xxx~~ Period(s) :
1969, 1970 and 1971.

State of New York
County of Albany

Catherine Steele, 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 September, 1976, she served the within
Notice of Decision by (certified) mail upon Robert F. Roth

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

as follows: Mr. Robert F. Roth
160 Reist Street
Williamsville, New York 14221

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~of the~~ 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 September, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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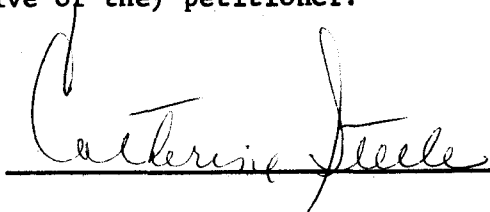
Catherine Steele, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Peter X. Bellanti, CPA

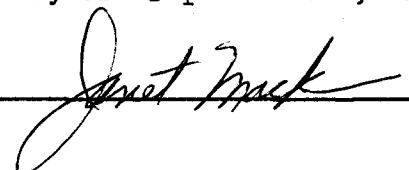
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Peter X. Bellanti, CPA
Fiddler and Company
1895 Sheridan Drive
Buffalo, New York 14223
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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 September, 1976.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 15, 1976

TELEPHONE: (518) **457-3850**

Mr. Robert F. Roth
160 Reist Street
Williamsville, New York 14221

Dear Mr. Roth:

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

Please take further notice that pursuant to
Section ~~722~~ **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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT F. ROTH	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1969, 1970 and 1971.	:	

Petitioner, Robert F. Roth, residing at 160 Reist Street, Williamsville, New York 14221, has filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1969, 1970 and 1971. (File No. 01561).

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the Offices of the State Tax Commission, State Office Building, Buffalo, New York, on April 29, 1976 at 9:15 A.M. Petitioner appeared by Peter X. Bellanti, Certified Public Accountant. The Income Tax Bureau appeared by Peter J. Crotty, Esq. (Richard M. Kaufman, Esq., of counsel).

ISSUES

I. Whether, petitioner, Robert F. Roth's, rental and investment activities during the years 1969, 1970 and 1971, are subject to the unincorporated business tax?

II. Whether, petitioner, Robert F. Roth, is entitled to a 50% unincorporated business tax deduction, on long-term capital gains, derived from the sale of apartment units in the year 1970?

FINDINGS OF FACT

1. Petitioner, Robert F. Roth, filed unincorporated business tax returns for the years 1969, 1970 and 1971.

2. In the year 1970, petitioner, Robert F. Roth, took a 50% long-term capital gain deduction from the sale of apartment units on his unincorporated business tax return.

3. On April 16, 1973, petitioner, Robert F. Roth, filed claims for refunds of unincorporated business tax of \$1.44 for 1969, \$556.00 for 1970 and \$459.00 for 1971.

4. On August 26, 1974, the Income Tax Bureau denied petitioner, Robert F. Roth's claims for refunds. On September 30, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner for the year 1970, disallowing his claim for a 50% capital gain deduction for unincorporated business tax purposes. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued against petitioner for \$537.45.

5. Petitioner, Robert F. Roth, owns and manages a small contracting business, Robert F. Roth Construction. During the 1960's while operating said business, petitioner constructed numerous small unfurnished apartment units for rental and investment purposes. Prior to 1968, the preponderance of petitioner's income emanated from his contracting activities. After said year, most of petitioner's income derived from the rental and sale of his apartment units.

6. During the years 1969, 1970 and 1971, petitioner, Robert F. Roth, derived substantial income from the rental and sale of his apartment units. Petitioner also earned \$9,631.00 from his contracting activities during said years. During the years in controversy petitioner used the same home office for both business activities. He failed to segregate funds, expenses or accounting records of the two enterprises. One checking account was used to accommodate both activities and bills for both were paid out of the same account.

7. Petitioner, Robert F. Roth, maintains that the income from the sale and rental of his apartment units during the years 1968, 1970 and 1971, is exempt from the unincorporated business tax, within the meaning and intent of sections 703(d) and 703(e) of the Tax Law.

CONCLUSIONS OF LAW

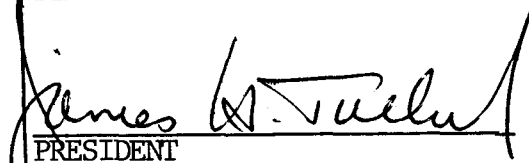
A. That petitioner, Robert F. Roth's, rental and investment activities during the years 1969, 1970 and 1971, were sufficiently related to petitioner's construction activities, and the financial accounts of each were sufficiently commingled, so as to preclude petitioner from an exemption from the unincorporated business tax. (Tax Law §703(d) and §703(e)).


B. That petitioner, Robert F. Roth, in the year 1970, improperly took a 50% long-term capital gain deduction on his unincorporated business tax return, from the sale of apartment units. No deduction is allowed in respect to the excess of net long-term capital gain over net short-term capital loss. (Tax Law, §706, subd. 6).

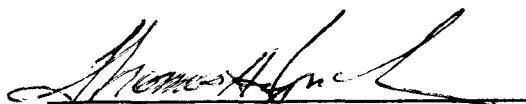
C. That the petition of Robert F. Roth is denied, his claims for refund are denied and the Notice of Deficiency issued September 30, 1974 is sustained.

DATED: Albany, New York
September 15, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER