

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JEFFREY AARON

AFFIDAVIT OF MAILING

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

State of New York  
County of Albany

Marsina Donnini, 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 24 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Jeffrey Aaron ~~(representative of the)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Jeffrey Aaron  
5768 228th Street  
Bayside, New York 11364  
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

24 day of August, 1977.

*Marsina Donnini*

*Janet Buck*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JEFFREY AARON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~22~~ 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1969, 1970 and 1971

State of New York  
County of Albany

Marsina Donnini, 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 24 day of August, 1977, she served the within  
Notice of Decision by (certified) mail upon Howard L. Kleiger, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Howard L. Kleiger, Esq.  
250 Broadway  
New York, New York 10007

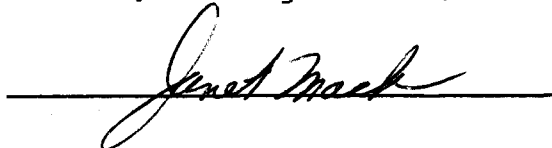
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

24 day of August, 1977

  
Marsina Donnini

  
Janet Mack



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

August 24, 1977

Mr. Jeffrey Aaron  
5768 228th Street  
Bayside, New York 11364

Dear Mr. Aaron:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(x) 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywaty**  
**Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
JEFFREY AARON	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1969, 1970 and 1971.	:	

---

Petitioner, Jeffrey Aaron, 5768 228th Street, Bayside, New York 11364, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1969, 1970 and 1971 (File No. 14226).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1976 at 2:45 P.M. Petitioner appeared by Howard L. Kleiger, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUE

Were the salaries, commissions, and partnership incomes received from real estate corporations and partnerships, in which petitioner owned fractional interests, interrelated with

his business activities as a real estate manager, and therefore subject to the unincorporated business tax?

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. During the years 1969, 1970 and 1971, the petitioner owned fractional interests in three real estate corporations and four real estate partnerships. During these years, he received a salary and a management fee from each of the corporations and from the partnerships he received a distributive share of the partnership income and management fees. In addition to this income, petitioner received salary income from Robins Agency, a construction company, and Walston and Co., a stock brokerage firm during the years 1969 and 1970, respectively. During 1969, he also received commission income from two related corporations for negotiating long term leases. A breakdown of his income is as follows:

<u>Source or type of Income</u>	<u>1969</u>	<u>1970</u>	<u>1971</u>
Net Business Income (from Management fees)	13,388.00	19,254.00	8,911.00
Income from Washing Machines	1,763.00	2,132.00	1,919.00

Salary Income: % of Ownership

Tenth Realty Corp.	40%	1,200.00	1,200.00	3,325.00
Parbrook Construction Co. Inc.	24%	1,260.00	2,160.00	2,820.00
Reliance Apartments Inc.	16 2/3%	1,200.00	1,280.00	4,800.00
Robins Agency	None	2,250.00	-	-
Walston and Co.	None	-	1,122.00	-

Partnership Income:

Hyson Jt. Venture	60%	-	10,817.00	8,666.00
Aaron Company	37½%	-	1,183.00	-
Montgomery Clarkson	60%	-	3,530.00	-

Commission Income:

Hyson Jt. Venture	-	-	2,142.00
Aaron Co.	-	-	5,253.00
Fanwood Building Corp.	10,331.00		
Aaron Agency Inc.	5,160.00		

Federal Adjustment	1,227.83
--------------------	----------

2. The petitioner was paid a salary by Tenth Realty Corp., and Reliance Apts., Inc. during the years in issue. The salary income from Tenth Realty Corp. increased from \$1,200.00 in 1970 to \$3,225.00 in 1971, while for the corresponding period, the management fees paid by Tenth Realty Corp. to the petitioner decreased by \$1,750.00. The salary income from Reliance Apts., Inc. increased from \$1,200.00 in 1970 to \$4,800.00 in 1971 and for the same period the management fees paid by Reliance to the petitioner decreased by \$3,600.00.

3. The petitioner received commission income from Fanwood Building, Aaron Agency, Inc., Hyson Joint Venture and Aaron Co. during the years in issue. The commissions were based on long term leases negotiated by petitioner for these entities.

4. During the years in issue the petitioner was a partner in Hyson Joint Venture, Aaron Company and Montgomery Clarkson

(subsequently merged into Hyson Joint Venture). His capital investment in these partnerships was in excess of \$300,000.00 in each of the three years involved. During 1970 and 1971, petitioner received partnership income from these partnerships in the sum of \$24,196.00. This partnership income represented a return on his capital investment.

5. Petitioner conceded that the income from management fees and services as well as the income derived from coin-operated washing machines are subject to the unincorporated business tax.

6. That the salary income received from Robins Agency during 1969 in the sum of \$2,250.00 and from Walston and Co. during 1970 in the sum of \$1,122.00 are not related to the petitioner's unincorporated business and therefore are not subject to the unincorporated business tax.

7. That the salary income received by the petitioner from those real estate corporations in which he was a shareholder, and the commissions paid to him, for the purpose of negotiating leases are interrelated with his activities as a real estate manager and are therefore subject to the unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

8. That the partnership income received by the petitioner during 1970 and 1971 was a distribution of the income derived from his capital investment in those partnerships and was not

interrelated with his activities as a real estate manager and therefore the income derived therefrom is not subject to the unincorporated business tax.

9. That the petitioner had reasonable cause for not filing unincorporated business tax returns for the years 1969 and 1970 and therefore the penalties assessed pursuant to sections 685(a)(1) and (a)(2), are cancelled.

10. That the petition of Jeffrey Aaron is granted to the extent of reducing the unincorporated business tax due from \$1,527.89 to \$1,404.15 for the year 1969; from \$1,791.74 to \$875.88 for the year 1970; from \$1,323.96 to \$847.33 for the year 1971, and cancelling the penalty imposed pursuant to sections 685(a)(1) and (a)(2) for the years 1969 and 1970. The additional unincorporated business tax due shall be together with such interest as may be lawfully owing; that the Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued January 29, 1973; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
August 24, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER