

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY J. BATTAGLIA

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year (s) ~~or Period(s)~~ 1972.:

State of New York  
County of Albany

Bruce Batchelor, 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 4th day of March, 1977, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Anthony J. Battaglia  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Anthony J. Battaglia  
1449 Sheridan Drive  
Kenmore, New York 14216  
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

4th day of March, 1977

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY J. BATTAGLIA

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)~~ 1972. :

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of March , 1977, she served the within  
Notice of Decision by (certified) mail upon Paul A. Battaglia  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Paul A. Battaglia, Esq.  
700 Liberty Bank Building  
Buffalo, New York 14202  
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

4th day of March , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

TELEPHONE: (518) **457-1723**

Mr. Anthony J. Battaglia  
1449 Sheridan Drive  
Kenmore, New York 14216

Dear Mr. Battaglia:

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

Please take further notice that pursuant to  
Section(8) **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,

**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of :  
ANTHONY J. BATTAGLIA : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Unincorporated Business Taxes :  
under Article 23 of the Tax Law for the :  
Year 1972. :  
:

---

Petitioner, Anthony J. Battaglia, residing at 1449 Sheridan Drive, Kenmore, New York 14216, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1972. (File #2-25753747).

A small claims hearing was held September 16, 1976 at 9:15 A.M. at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, before Harry Huebsch, Hearing Officer. Petitioner, Anthony J. Battaglia, appeared with his representative, Paul A. Battaglia, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq., of counsel).

ISSUES

I. Was the rental income received from leased property in 1972 includible in computing net business income for purposes of the New York State unincorporated business tax?

II. Was the gain realized from the sale of such assets subject to New York State unincorporated business tax for the year 1972?

III. Was the petition timely filed?

FINDINGS OF FACT

1. In 1929, petitioner, Anthony J. Battaglia, purchased a three-story building. He operated a tavern and restaurant on the first floor, and he and his family lived on the second floor. The third floor contained an apartment and some rooms which were rented on a weekly or monthly basis. In 1942, petitioner, Anthony J. Battaglia, purchased an adjacent two-store building which contained two apartments and a two-car garage. Petitioner, Anthony J. Battaglia, rented the apartments on a monthly basis and used the garage himself. In 1960, petitioner, Anthony J. Battaglia, purchased an adjacent lot which was used as a parking lot for the tavern and restaurant customers. The properties were contiguous.

2. Petitioner, Anthony J. Battaglia, was 68 years old in 1970 and no longer had the services of his son in the tavern and restaurant business. He had previously attempted to sell the business without success. In 1970 he leased the business premises to an unrelated party for \$400.00 per month and retired from all business activities except for the collection of rents. In 1972, he sold all three properties to another unrelated party for \$50,000.00. The lessee of the tavern and restaurant property continued in business under the new property owner.

3. On October 27, 1975, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$2,233.37 for the year 1972. The 90th day after this date fell on a Sunday. The petition was mailed on the following day.

4. Petitioner, Anthony J. Battaglia, filed unincorporated business tax returns up to the date that he ceased operations and leased out the premises.

CONCLUSIONS OF LAW

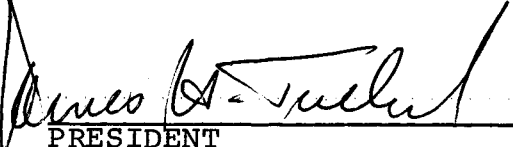
A. That the petition of Anthony J. Battaglia was timely filed in accordance with section 691(c) of the Tax Law.

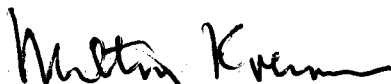
B. That petitioner, Anthony J. Battaglia, was not engaged in the carrying on of an unincorporated business in 1972 in accordance with the meaning and intent of section 703(a) of the Tax Law, and that he was in fact, holding, leasing or managing real property exempt from imposition of unincorporated business tax on the gain from sale of property and on the rental income in accordance with the meaning and intent of section 703(e) of the Tax Law.

C. That the petition of Anthony J. Battaglia is granted and the Notice of Deficiency dated October 27, 1975 is cancelled.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER