

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
WILLIAM CRUSE

AFFIDAVIT OF MAILING

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

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 William Cruse  
(~~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. William Cruse  
3884 Lincoln Street  
Seaford, New York 11783  
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  
STATE TAX COMMISSION

In the Matter of the Petition

of  
WILLIAM CRUSE

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) ~~xxx Period(s)~~ :  
1969, 1970 and 1971.

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, he served the within  
Notice of Decision by (certified) mail upon Anthony R. Ullmann, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Anthony R. Ullmann, CPA  
275 Madison Avenue  
New York, NY 10016  
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

Just 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. William Cruse  
3884 Lincoln Street  
Seaford, New York 11783

Dear Mr. Cruse:

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

Please take further notice that pursuant to  
Section(~~x~~) **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

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

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Petitioner, William Cruse, residing at 3884 Lincoln Street, Seaford, New York 11783, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1969, 1970 and 1971 (File No. 1-88024340).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on August 19, 1976 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Anthony R. Ullmann, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq. of counsel).

ISSUE

Whether the activities of petitioner, William Cruse, as a real estate broker during the years 1969, 1970 and 1971, constituted the carrying on of an unincorporated business subject to unincorporated business tax or constituted activities as an employee and thus exempt from such tax.

FINDINGS OF FACT

1. Petitioner, William Cruse, and his wife filed New York State resident income tax returns for the years 1969, 1970 and 1971. He did not file New York State unincorporated business tax returns for said years.

2. On February 13, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, William Cruse, imposing unincorporated business tax upon the income received by him from his activities as a real estate broker during the years 1969, 1970 and 1971. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,297.98.

3. During the years 1969, 1970 and 1971, the petitioner, William Cruse, was the president of a corporation engaged in business as a real estate broker. This corporation, Cruse & Smith Realty, Inc. or its successor Cruse & Smith Resales, Inc., was the only employer of the petitioner, William Cruse. The petitioner was a 50% stockholder of Cruse & Smith Realty, Inc. and a 100% stockholder of Cruse & Smith Resales, Inc. The petitioner, William Cruse, maintained no place of business of his own, had no employees and did no advertising, was supplied an automobile by said corporation and devoted his entire time to the corporation.

4. During the years 1969, 1970 and 1971, the income received by petitioner, William Cruse, was recorded on said corporate returns as compensation to officers. There were no withholding taxes or social

security taxes withheld from said income. The petitioner, William Cruse, was covered for workmens compensation and unemployment insurance and other employee related plans. He deducted unreimbursed business expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax returns.

CONCLUSIONS OF LAW

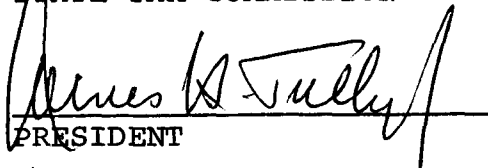
A. That the income received by petitioner, William Cruse, from Cruse and Smith Realty, Inc. and Cruse and Smith Resales, Inc. during the years 1969, 1970 and 1971 constituted compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the activities of the petitioner, William Cruse, during the years 1969, 1970 and 1971 did not constitute the carrying on of an unincorporated business, and his income derived therefrom is not subject to the unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

C. That the petition of William Cruse is sustained and the Notice of Deficiency issued July 28, 1975, is cancelled.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER