

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EAGLE HOME SALES AND INSURANCE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article 23 of the :
Tax Law for the Year(s) 1971 and 1972. :
1971 and 1972.

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 Eagle Home Sales and

Insurance

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Eagle Home Sales and Insurance
102-61 Rockaway Boulevard
Ozone Park, New York 11417

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

24th day of August , 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EAGLE HOME SALES AND INSURANCE

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article 130 23 of the :
Tax Law for the Year(s) 1971 and 1972. :
1971 and 1972.

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 John P. Pisani, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John P. Pisani, C.P.A.
37 East 48th Street
Bayonne, New Jersey 07002
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

24th 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

Eagle Home Sales and Insurance
102-61 Rockaway Boulevard
Ozone Park, New York 11417

Gentlemen:

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(s) **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 :
EAGLE HOME SALES AND INSURANCE :
for Redetermination of a Deficiency or for : DECISION
Refund of Unincorporated Business Taxes :
under Article 23 of the Tax Law for the :
Years 1971 and 1972. :
:

Petitioner, Eagle Home Sales and Insurance, located at 102-61 Rockaway Boulevard, Ozone Park, New York 11417, 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 1971 and 1972. (File No. 12529).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on September 14, 1976 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by John P. Pisani, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Whether the income from the real estate activities of the partners, Patsey Ferraro and Carmine P. Iannaccone, for the years 1971 and 1972 is connected with the real estate activities of the partnership, Eagle Home Sales and Insurance so as to constitute additional unincorporated business income.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Income Tax Bureau issued a Notice of Deficiency against petitioner, Eagle Home Sales and Insurance, imposing additional unincorporated business taxes on the grounds that all income from the partners' activities in real estate is subject to the unincorporated business tax. Thus income from the sale of real estate owned by the same partner must be included on the partnership unincorporated business tax return. Also in 1972, the deduction for contributions was claimed in duplicate. The excess of \$1,072.00 was disallowed. In addition, New York City unincorporated business tax is deductible in computing income subject to New York State unincorporated business tax. Therefore, no modification was necessary and income from business was decreased for the New York City unincorporated business tax of \$150.00 for 1971 and \$767.69 for 1972.

2. The petitioners are not contesting the adjustment for contributions that were claimed in duplicate for the year 1972.

3. Petitioners, Patsey Ferraro and Carmine P. Iannaccone, individually and as co-partners d/b/u the firm name and style of Eagle Home Sales and Insurance, were engaged in a real estate brokerage business during the years 1971 and 1972. The partnership's income is derived from commissions earned as the result of a sale of real property, owned by a client, to a customer. The partnership does not purchase real property for sale to customers in the ordinary course of its trade or business, and does not maintain an inventory of real estate property for resale.

4. During the years 1971 and 1972, the partners, Patsey Ferraro and Carmine P. Iannaccone, purchased approximately three or four pieces of real property for future profit on speculation, either individually, jointly, or with other individuals. However, these transactions were solely for their own accounts and not connected with partnership, Eagle Home Sales and Insurance.

5. That the partnership, Eagle Home Sales and Insurance, is a real estate brokerage business, with an established place of business, regularly engaged in the business of earning commissions from the sale of real estate property, owned by a client, to a customer, and not in the business of purchasing real property for resale to customers.

6. That the purchase of real property and its resale entered into by the partners, Patsey Ferraro and Carmine P. Iannaccone, was solely for their own accounts.

7. That the income from the real estate activities of the partners, Patsey Ferraro and Carmine P. Iannaccone, for the years 1971 and 1972, was not connected with the real estate activities of Eagle Home Sales and Insurance. Therefore, said income does not constitute additional unincorporated business income, in accordance with the meaning and intent of section 703(d) of the Tax Law and 20 NYCRR 203.12.

8. That the petition of Patsey Ferraro and Carmine P. Iannaccone, individually, and as co-partners d/b/u the firm and style of Eagle Homes Sales and Insurance, is granted to the extent of excluding the income from the real estate activities of the partners, from the income of the partnership; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued March 31, 1975; 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