

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JOSEPH A. KAYE, JR. and CHARLES J. KAYE  
d/b/a/ THE KAYE AGENCY  
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) ~~1965~~ 1965: 1966

AFFIDAVIT OF MAILING

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 30th day of June, 1977, she served the within Notice of Decision by (certified) mail upon Joseph A. Kaye, Jr. and Charles J. Kaye d/b/a/ The Kaye Agency ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Joseph A. Kaye, Jr. and Mr. Charles J. Kaye d/b/a The Kaye Agency  
646 Broadway  
Massapequa, NY 11758  
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

30th day of June, 1977.

Marsina Donnini

Janet Mack



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

June 30, 1977

TELEPHONE: (518) 457-1723

Mr. Joseph A. Kaye, Jr. and Mr. Charles J. Kaye  
d/b/a/ The Kaye Agency  
646 Broadway  
Massapequa, NY 11758  
Gentlemen:

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

Please take further notice that pursuant to  
Section(s) **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. Puggia*

Frank J. Puggia

Supervisor of Small Claims Hearings

Enc.

cc: ~~Repetition's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JOSEPH A. KAYE, JR. and CHARLES J. KAYE : DECISION  
d/b/a THE KAYE AGENCY :  
for Redetermination of a Deficiency or for :  
Refund of Unincorporated Business Taxes :  
under Article 23 of the Tax Law for the :  
Years 1965 and 1966. :  
:

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Petitioners, Joseph A. Kaye, Jr. and Charles J. Kaye d/b/a The Kaye Agency, 646 Broadway, Massapequa, New York 11758, have 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 1965 and 1966. (File No. 2361).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on July 16, 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 Joseph A. Kaye, Jr. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Whether income from the rental of real property owned as joint tenants by partners in a real estate and insurance agency is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Joseph A. Kaye, Jr. and Charles J. Kaye, filed two partnership returns; one for "The Kaye Agency," in connection with their general insurance and real estate business. The other partnership return was filed under the names of "Joseph A. Kaye, Jr. and Charles J. Kaye," in connection with the rental income received from business property located at 646 Broadway, Massapequa, New York.

2. An unincorporated business tax was paid on the business income shown on the partnership return of "The Kaye Agency" but, not for rental income shown on the partnership return of "Joseph A. Kaye, Jr. and Charles J. Kaye."

3. On September 20, 1968, the Income Tax Bureau issued a Statement of Audit Changes, combining the business income of the aforesaid partnerships for the years 1965 and 1966, and imposing unincorporated business tax against said combined business income, upon the grounds that where two or more partnerships are identical, they are combined for unincorporated business tax purposes. In accordance with the said Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$268.64.

4. The partnership of Joseph A. Kaye, Jr. and Charles J. Kaye d/b/a "The Kaye Agency" is a licensed general insurance and real estate brokerage firm. Said partnership was formed on September 28, 1956, reporting gross receipts from insurance commissions and real estate sales.

5. The other purported partnership, known as "Joseph A. Kaye, Jr. and Charles J. Kaye," owns a commercial building located at 646 Broadway, Massapequa, New York. There was never a formal partnership agreement. Said property was purchased on May 22, 1957, by Joseph A. Kaye, Jr. and Charles J. Kaye as "Joint Tenants in common with Right of Survivorship." (sic.) Petitioner, Joseph A. Kaye, Jr., testified that the partnership return for said property was filed only as a matter of convenience. The petitioners, Joseph A. Kaye, Jr. and Charles J. Kaye, do not own any other property jointly and the only income received by said partnership was derived from the rents received from the building.

6. The petitioners, Joseph A. Kaye, Jr. and Charles J. Kaye, kept separate records and bank accounts for the partnership known as "The Kay Agency" and for the other purported partnership known as "Joseph A. Kaye, Jr. and Charles J. Kaye." The partnership known as "The Kaye Agency" was charged rent for the use of a portion of the building.

#### CONCLUSIONS OF LAW

A. That the purported partnership known as "Joseph A. Kaye, Jr. and Charles J. Kaye" is not to be considered an entity subject to unincorporated business tax within the meaning and intent of section 703(e) of the Tax Law.

B. That the income received by Joseph A. Kaye, Jr. and Charles J. Kaye from the rental property is not subject to unincorporated business tax, and therefore, the income received by said purported partnership and the partnership known as "The Kaye Agency" is not to be combined for unincorporated business tax purposes.


C. That the petition of Joseph A. Kaye, Jr. and Charles J. Kaye d/b/a "The Kaye Agency" is granted and the Notice of Deficiency issued May 26, 1969, is cancelled.

DATED: Albany, New York  
June 30, 1977

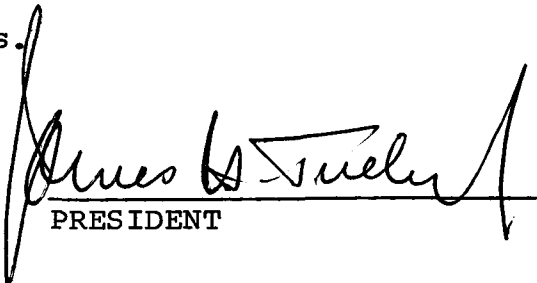
STATE TAX COMMISSION

\_\_\_\_\_  
President

  
\_\_\_\_\_  
Commissioner

  
\_\_\_\_\_  
Commissioner

President James H. Tully, Jr. dissents.

  
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PRESIDENT