

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HERBERT H. REDL

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) ~~XXXXXX~~ :
1963, 1964 and 1967


State of New York
County of Albany

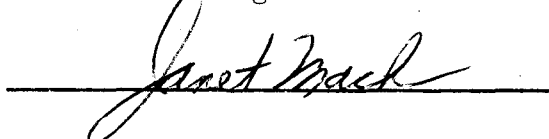
Marsina Donnini , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of August , 1977 , she served the within
Notice of Decision by (certified) mail upon Herbert H. Redl
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Herbert H. Redl
Stream Lane
Pleasant Valley, New York
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

16th day of August , 1977.


Marsina Donnini


Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HERBERT H. REDL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(8)~~ 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ Period(s) :
1963, 1964 and 1967

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 16th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon John J. Cina, 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 J. Cina, CPA
272 Mill Street
Poughkeepsie, New York
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

16th day of August, 1977.

Marsina Donnini

Just Mac



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
August 16, 1977

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

Herbert H. Redl
Stream Lane
Pleasant Valley, New York

Dear Mr. Redl:

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,


PAUL B. COBURN
Supervising Tax
Hearing Officer

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HERBERT H. REDL :
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Years 1963, 1964 and 1967. :

The petitioner, in writing, waived a hearing and requested the issuance of a decision based upon the entire record contained in the file.

After due consideration of the record, the State Tax Commission renders the following decision.

Whether the adjustments eliminating real estate income and gains on the sale of real property from the petitioner's unincorporated business tax returns were proper.



FINDINGS OF FACT

1. Herbert Redl and Sue Redl, his wife, filed joint New York State personal income tax returns for the years 1963, 1964 and 1967. The petitioner, Herbert H. Redl, filed unincorporated business tax returns for the aforesaid years, in which he included rental income from buildings owned by him. The petitioner executed consents extending to April 15, 1969 the time within which to issue assessments for the years 1963 and 1964.

2. On or about April 11, 1969, Herbert H. Redl and Sue Redl, his wife, filed claims for credit or refund of personal income tax in the amount of \$619.60 for the year 1965.

3. On April 11, 1969, the Income Tax Bureau issued a Statement of Audit Changes imposing additional personal income tax against the petitioner, Herbert H. Redl, for the years 1963, 1964 and 1967 in the amount of \$1,627.22. Accordingly, it issued a Notice of Deficiency therefor. The Notice of Deficiency indicated that an overpayment of \$619.60 for 1965 and an overpayment of \$492.51 for 1966, plus interest of \$169.99, totaling \$1,282.10, would be applied against said deficiency of \$1,627.22, leaving a balance due of \$345.12.

4. The petitioner filed Schedules "C" on his Federal income tax returns for the years 1963, 1964 and 1967, in which he indicated his business as "auto body repairs." The petitioner included therein rental income from real property owned by him, as well as expenses in connection therewith and gain from the sale of real property.

5. The Income Tax Bureau adjusted the unincorporated business tax returns of the petitioner by eliminating therefrom real estate income and gains on the sale of real property.

6. The real property owned by the petitioner and his wife are not in any way connected with petitioner's auto body repair business in Poughkeepsie, New York. The real property includes office buildings and residential property owned and managed by the petitioner and his wife.

CONCLUSIONS OF LAW

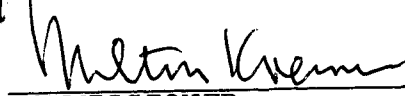
A. That the real property owned by the petitioner is not part of his business, but is exempt from unincorporated business tax in accordance with the intent and meaning of section 703(e) of the Tax Law.

B. That the Notice of Deficiency is correct and the petition of Herbert H. Redl be and the same is hereby denied.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M

FORMAL HEARING

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

John J. Cina CPA
272 Mill Street
Poughkeepsie, New York

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STATE OF NEW YORK
STATE TAX COMMISSION

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of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~xxx~~ Period(s) :
1963, 1964 and 1967.

State of New York
County of Albany

John Huhn , 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 12th day of September , 1977 , he served the within
Notice of Decision by (~~certified~~) mail upon John J.
Cina, CPA. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: John J. Cina, CPA.
272 Mill Street
Poughkeepsie, New York
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

12th day of September , 1977.

Janet Mack

John Huhn