

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CALVIN E. BELL

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~~  
1967 through 1972

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 24th day of January , 1979 , He served the within  
Notice of Decision by (certified) mail upon Calvin E. Bell  
(~~representative of the~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Calvin E. Bell  
2001 Brightwater Boulevard  
St. Petersburg, FA 33704

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 January , 1979.

Maureen J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CALVIN E. BELL

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~~ :  
1967 through 1972

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 24th day of January , 1979 , He served the within  
Notice of Decision by (certified) mail upon William Lipton, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: William Lipton, Esq.  
c/o S. D. Leidesdorf & Co.  
100 East 42nd Street  
New York, NY 10017  
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 January , 19 79

Marilyn J. Papineau

John Huhn



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

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

January 24, 1979

Calvin E. Bell  
2001 Brightwater Boulevard  
St. Petersburg, FL 33704

Dear Mr. Bell:

**Notice of Decision**

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) ~~4~~ **222** 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~~ **four weeks** Court of the State of New York, Albany County, within 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

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In the Matter of the Petition	:	
of	:	
CALVIN E. BELL	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967 through 1972.	:	

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Petitioner, Calvin E. Bell, 2001 Brightwater Boulevard, St. Petersburg, Florida 33704, 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 1967 through 1972 (File No. 10952).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 14, 1977 at 1:15 P.M. Petitioner appeared by William Lipton, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUE

Whether petitioner's real estate activities during the years 1967 through 1972 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Calvin E. Bell, and his wife, Ina Bell, filed New York State resident returns for the years 1967 through 1972. Petitioner did not file unincorporated business tax returns for said years.

2. On July 28, 1975, the Income Tax Bureau issued statements of audit changes against petitioner, on which it contended that his real estate activities during the years at issue constituted the carrying on of an unincorporated business. It based its contention, in part, on a decision of the State Tax Commission dated July 2, 1974 for 1965 and 1966, which involved the same issue. Accordingly, it issued a Notice of Deficiency against petitioner on July 28, 1975 for 1967, 1968 and 1969 in the amount of \$2,409.34 in unincorporated business tax, plus \$848.06 in interest, for a total of \$3,257.40. It issued another Notice of Deficiency on July 28, 1975 for 1970, 1971 and 1972 in the amount of \$4,107.48 in unincorporated business tax, plus \$881.29 in interest, for a total of \$4,988.77.

3. Petitioner contended that his income was derived from services performed as an employee of 72nd Street Properties Corporation, Inc. (hereinafter "the corporation") and from his real estate brokerage business. He stated that he had no documentary evidence to submit because his previous accountant

retained all of his records. He contended that the corporation was a family-owned entity of which he was president, and that he was paid \$1,800.00 per month. He had desk space in the corporation's office and his duty was the management of the corporation's sole asset, a 220-unit apartment house. He rented apartments and handled the mortgage financing of the corporation. Petitioner contended further that income taxes were not withheld from his wages because he was expecting a net operating loss in 1974.

4. Petitioner reported his occupation to be that of a real estate broker and/or real estate owner and reported his business income to be derived from his activities as a real estate broker, manager and/or owner, on his New York State personal income tax returns. He did not report any amount as wages, nor were wage and tax statements attached to said tax returns.

5. Petitioner was a licensed real estate broker and maintained an office in his home. He paid co-brokerage commissions to a sub-broker.

6. Petitioner filed a Federal Schedule "C" with his Federal tax returns, on which he reported his business income, including that from the corporation. The income from the corporation was reported as management fees.

#### CONCLUSIONS OF LAW

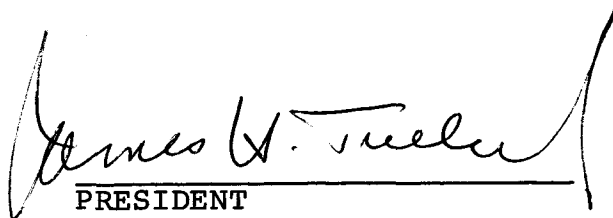
A. That petitioner, Calvin E. Bell's real estate activities during the years 1967 through 1972 constituted the carrying on of

an unincorporated business, in accordance with the meaning and intent of section 703 of the Tax Law.

B. That the petition of Calvin E. Bell is denied and the notices of deficiency issued July 28, 1975 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
January 24, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER