

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN CERONE, JR.

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)XXXXXXXXXX(S) :
1971

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 John Cerone, Jr.

(XXXXXXXXXXXXXXXXXX) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

John Cerone, Jr.
Box 402-C
Sunset Boulevard
Albany, NY 12205

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 (XXXXXXXXXXXXXXXXXX
(XXXXXX) petitioner herein and that the address set forth on said wrapper is the
last known address of the (XXXXXXXXXXXXXXXXXX) petitioner.

Sworn to before me this

24th day of January , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN CERONE, JR.

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 ~~(8) 1971~~ :
1971

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 Leonard J. Senzon
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Leonard J. Senzon
4 Automation Lane-Computer Park
Albany, NY 12205

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
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

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

January 24, 1979

John Carone, Jr.
Box 402-C
Sunset Boulevard
Albany, NY 12203

Dear Mr. Carone:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(§) 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 **four 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	:	
JOHN CERONE, JR.	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1971.	:	

Petitioner, John Cerone, Jr., Box 402-C, Sunset Boulevard, Albany, New York 12205, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1971 (File No. 10619).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Bldg. #9, State Campus, Albany, New York, on May 3, 1978 at 1:15 P.M. Petitioner appeared by Leonard J. Senzon, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul Lefebvre and Francis Cosgrove, Esqs., of counsel).

ISSUES

I. Whether the income derived from the sale of land by petitioner during 1971 was subject to unincorporated business tax.

II. Whether penalties (pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law) were properly imposed on petitioner by the Income Tax Bureau.

FINDINGS OF FACT

1. Petitioner, John Cerone, Jr., timely filed a New York State personal income tax return for 1971, in which he reported business income of \$14,271.34. He did not file an unincorporated business tax return for said year.

2. The Income Tax Bureau contended that petitioner's activities as a land developer constituted the carrying on of an unincorporated business and that the income of \$14,271.34 derived therefrom was subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency for 1971 on September 30, 1974 for \$352.94 in unincorporated business tax, plus \$206.90 in penalty and \$52.04 in interest, for a sum of \$611.88.

3. Petitioner was president of John Cerone, Inc. which was engaged in the business of land excavation and development. Said corporation made improvements to a sizable amount of land in Colonie, New York, which was owned by petitioner. Petitioner subdivided the land into lots within a five or six block development and sold the lots over a period of years. During 1971 he sold four of the lots. He reported the income derived from the sale of the lots on Federal Schedule "C" and described his business activity as "developer" on said schedule.

4. Petitioner contended that he did not believe that he was in the business of selling parcels of land; therefore, he did not file an unincorporated business tax return for 1971.

CONCLUSIONS OF LAW

A. That petitioner, John Cerone, Jr., was engaged in the carrying on of an unincorporated business and that the income derived from the sale of the four parcels of land was subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) of the Tax Law. Petitioner's activities were those of a dealer holding property primarily for sale to customers in the ordinary course of his trade or business and as such, did not constitute the purchase and sale of property for his own account, which would have been exempt from unincorporated business tax under section 703(d) of the Tax Law.

B. That the penalties under sections 685(a)(1) and 685(a)(2) of the Tax Law were properly imposed on petitioner by the Income Tax Bureau.

C. That the petition of John Cerone, Jr. is denied and the Notice of Deficiency issued September 30, 1974 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER