

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Federoff & Kurn Realty Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Unincorporated Business Tax :  
under Article 23 of the Tax Law  
for the Years 1969, 1970. :

State of New York  
County of Albany

Jay Vredenburg, 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 31st day of August, 1979, he served the within notice of Decision by certified mail upon Federoff & Kurn Realty Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Federoff & Kurn Realty Co.  
31 Codman St., PO Box 102  
Brentwood, NY 11717

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

Sworn to before me this  
31st day of August, 1979.

Mary Dominici

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Federoff & Kurn Realty Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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Unincorporated Business Tax :  
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State of New York  
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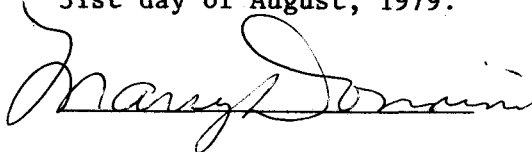
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Harry Ravetz the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

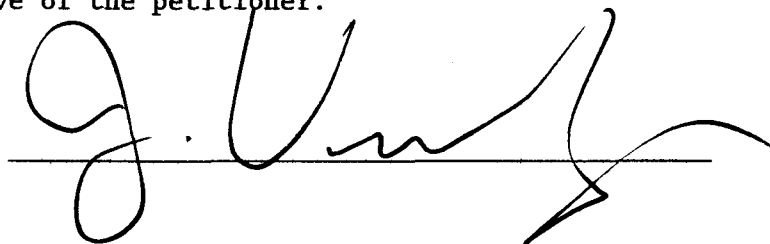
Mr. Harry Ravetz  
31 E. John St.  
Hicksville, NY 11801

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  
31st day of August, 1979.

  
Mary J. Quinn

  
Jay Vredenburg



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

STATE TAX COMMISSION  
JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

Federoff & Kurn Realty Co.  
31 Codman St., PO Box 102  
Brentwood, NY 11717

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,

A handwritten signature in dark ink, appearing to read "John J. Sollecito", written in a cursive style.

cc: Petitioner's Representative  
Harry Ravetz  
31 E. John St.  
Hicksville, NY 11801  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
FEDEROFF AND KURN REALTY CO. : DECISION  
for Redetermination of a Deficiency or for :  
Refund of Unincorporated Business Tax under :  
Article 23 of the Tax Law for the Years 1969 :  
and 1970. :

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Petitioner, Federoff and Kurn Realty Co., 31 Codman Street, P. O. Box 102, Brentwood, New York 11717, 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 1969 and 1970 (File No. 14050).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 21, 1978 at 10:45 A.M. Petitioner appeared by Harry Ravetz, CPA and by Ira Kurn, a partner in petitioner. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

#### ISSUES

- I. Whether petitioner's activities as a real estate broker during 1969 and 1970 constituted the carrying on of an unincorporated business.
- II. Whether penalties imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law were proper.

#### FINDINGS OF FACT

1. Federoff and Kurn Realty Company ("petitioners") filed a New York State partnership return for 1969 and 1970, on which salaries paid to partners, Harry Federoff (now deceased) and Ira Kurn, were deducted as a partnership expense. On

the advice of its accountant, petitioner did not complete the unincorporated business tax portions of the partnership returns (Schedule U-A and U-B).

2. Petitioner executed a consent extending the period of limitation for 1969 from April 15, 1973 to April 15, 1974.

3. On April 12, 1974, the Income Tax Bureau issued a Notice of Deficiency for 1969 and 1970, holding that salaries paid to partners were includable in the partnership's taxable income, and were subject to unincorporated business tax. In addition, penalties were imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law.

4. Harry Federoff and Ira Kurn formed the partnership of Federoff and Kurn Realty Company under a written agreement of partnership. Petitioner was a licensed real estate brokerage firm and was retained by Sid Farber Homes, Inc. ("Farber"). This was for the purpose of exclusively representing Farber in the selling of Farber's homes.

5. The partners operated from a model home provided by Farber, and they were allowed to use the facilities without charge.

6. The partnership filed a Certificate of Doing Business in Suffolk County. It maintained a set of books as a partnership and operated bank accounts as partnership accounts, with full authorization of the partners to sign checks and withdraw funds.

7. Both partners were restricted from selling or representing other firms, and were required to sell homes in accordance with prices, terms and conditions set by Farber.

8. Although the partnership had its own real estate salesmen, petitioner contended that these individuals were hired, directed, controlled and paid by Farber.

9. Petitioner contended that the partnership was paid a weekly fee by Farber which represented payment of both partners' salaries, compensation due to salesmen and reimbursement of various business expenses. The weekly fee was not subjected to the withholding of payroll taxes.

10. Motor vehicles used by both partners were owned and maintained by the partnership. The partnership also carried automobile insurance on the vehicles.

11. New York State partnership returns were filed for the years 1963 through 1968. Amounts designated thereon as "partners salaries" were included in determining taxable business income. Unincorporated business taxes were computed and paid on said returns.

CONCLUSIONS OF LAW

A. That the activities of Harry Federoff and Ira Kurn, d/b/a Federoff and Kurn Realty Company, during 1969 and 1970 constituted the carrying on of an unincorporated business; the income derived therefrom, including amounts labeled as "partners' salaries," is subject to unincorporated business tax, under section 703 of the Tax Law.

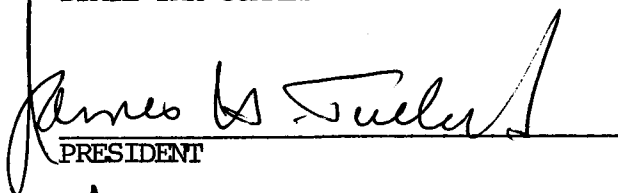
B. That petitioner's failure to complete the unincorporated business tax sections of the partnership returns was due to reasonable cause and not due to willful neglect; accordingly, the penalties asserted under sections 685(a) (1) and 685(a) (2) of the Tax Law are cancelled.

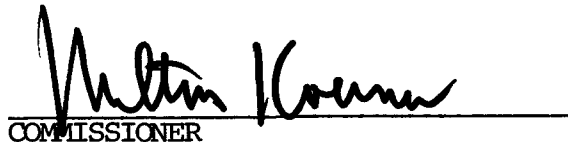
C. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued April 12, 1974 to the extent indicated in Conclusion of Law "B" and that, except as so granted, the petition is in all other respects denied.

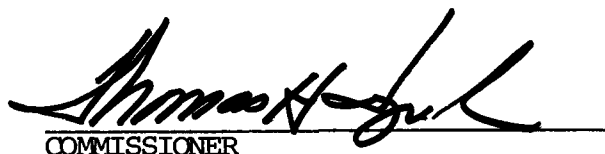
DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER