

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Edward T. O'Rourke :

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 1968, 1969. :

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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Edward T. O'Rourke, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Edward T. O'Rourke
Willow Lane
Greenwood Lake, NY 10925

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
16th day of November, 1979.

Joanne Krapp

J. Vredenburg

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

November 16, 1979

Edward T. O'Rourke
Willow Lane
Greenwood Lake, NY 10925

Dear Mr. O'Rourke:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
EDWARD T. O'ROURKE
for Redetermination of a Deficiency for
Refund of Unincorporated Business Tax
under Article 23 of the Tax Law for the
Years 1968 and 1969.

DECISION

Petitioner, Edward T. O'Rourke, Willow Lane, Greenwood Lake, New York 10925, 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 1968 and 1969 (File No. 13345).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 22, 1978 at 10:45 A.M. and was continued on March 5, 1979 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUES

I. Whether the business income reported by petitioner was partnership income and a partnership paid the unincorporated business tax.

II. Whether petitioner's activities as a real estate broker constituted business income subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Edward T. O'Rourke, timely filed New York State Income Tax Resident Returns for 1968 and 1969. He reported business income as a real estate broker for both years. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioner, Edward T. O'Rourke, on the grounds that business income reported is considered to have been derived from an unincorporated business and subject to the unincorporated business tax. Accordingly, on August 27, 1973, it issued a Notice of Deficiency for 1968 and 1969 imposing \$719.24 in unincorporated business tax, plus \$279.07 in penalty (pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law) and interest of \$155.93, for a total due of \$1,153.64.

3. Petitioner, Edward T. O'Rourke, contended that he worked for the Phillips Agency, which is a real estate and insurance business. He contended that he was paid on a wage statement as a claims adjuster. Mr. O'Rourke reported no wage income on either return and he did not submit copies of the wage tax statements.

4. Petitioner, Edward T. O'Rourke, contended that the Phillips Agency was a partnership and that his partner paid the unincorporated business tax for the agency. Mr. O'Rourke submitted copies of his 1968 and 1969 Federal income tax returns. Attached to said returns were copies of Federal Schedule "C" which showed the principal business activity as real estate and the business name, The Phillips Agency. Said Schedule "C" indicated a net profit of \$10,429.02 for 1968 and a net profit of \$18,782.80 for 1969. Mr. O'Rourke contended that he worked at selling real estate when he could.

5. Petitioner did not submit any documentary or any satisfactory evidence to substantiate that the Phillips Agency was a partnership or that a partnership paid the unincorporated business tax at issue.

6. Petitioner, Edward T. O'Rourke, submitted a copy of the 1969 Federal partnership returns of Filipowski and O'Rourke. However, the income reported

on said partnership return was not the income at issue as contended by Mr. O'Rourke.

CONCLUSIONS OF LAW

A. That petitioner, Edward T. O'Rourke, failed to sustain the burden of proof as imposed by section 689(e) of the Tax Law to establish that the business income reported by him was partnership income and that a partnership paid the unincorporated business tax on said income.

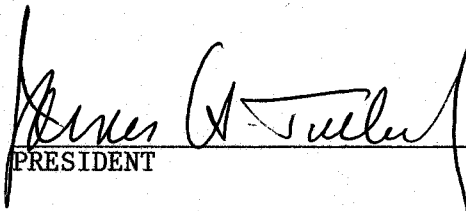
B. That petitioner, Edward T. O'Rourke's, activities as a real estate broker constituted the carrying on of an unincorporated business within the meaning of section 703(a) of the Tax Law.

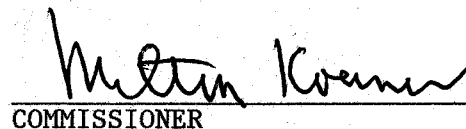
C. That the petition of Edward T. O'Rourke is denied and the Notice of Deficiency issued on August 27, 1973 is sustained, together with such additional interest as may be lawfully owing.

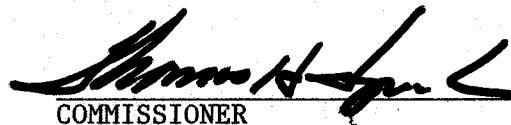
DATED: Albany, New York

STATE TAX COMMISSION

NOV 16 1979


PRESIDENT


COMMISSIONER


COMMISSIONER

1918 8 1 VON

1918 8 1 VON