

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Lawrence E. Rack :

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 Year 1970. :

State of New York

County of Albany

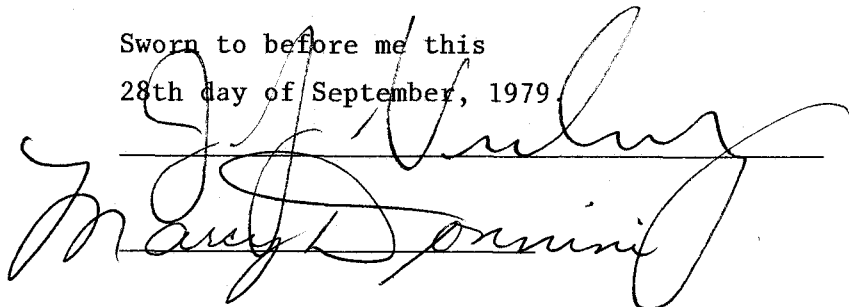
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Lawrence E. Rack, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence E. Rack  
Box 25  
Pawling, NY 12564

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  
28th day of September, 1979.



The block contains two handwritten signatures. The first signature, in cursive, appears to be 'G. J. Vredenburg' and is written over a horizontal line. The second signature, also in cursive, appears to be 'M. J. Vredenburg' and is written below the first signature.

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

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Lawrence E. Rack  
Box 25  
Pawling, NY 12564

Dear Mr. Rack:

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,



cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition  
of  
LAWRENCE E. RACK  
for Redetermination of a Deficiency or  
for Refund of Unincorporated Business Tax :  
under Article 23 of the Tax Law for the  
Year 1970. :

---

DECISION

Petitioner, Lawrence E. Rack, Box 25, Pawling, New York 12564, 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 1970 (File No. 15399).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on December 18, 1978 at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

ISSUE

Whether petitioner's activities as a real estate broker constituted the practice of a profession and, thus, are not deemed to be an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Lawrence E. Rack, timely filed a New York State personal income tax return for 1970. He did not file an unincorporated business tax return for said year.

2. On March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner for 1970, in the amount of \$713.02 in unincorporated business tax, plus \$338.69 in penalty and \$211.98 in interest, for a total due of \$1,263.69. This was done on the grounds that petitioner was engaged in the

carrying on of an unincorporated business, and that the income derived therefrom was subject to unincorporated business tax.

3. Petitioner testified that he was a self-employed real estate broker. His income (consisting of commissions) was derived mainly from personal services, selling real estate for clients. Capital was not a material income-producing factor. He maintained an office and employed part-time sales and clerical help and had his own letterhead.

4. Petitioner's educational background in real estate sales consisted of courses taken evenings at Dutchess County Community College.

CONCLUSIONS OF LAW

A. That petitioner, Lawrence E. Rack's activities during 1970, although requiring special knowledge and experience, did not constitute the practice of a profession, within the meaning and intent of section 703(c) of the Tax Law.

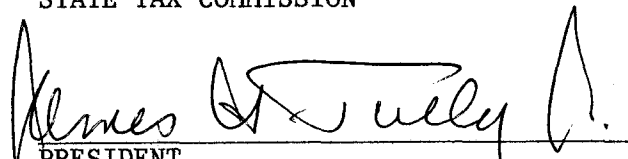
B. That petitioner's activities during said year constituted the carrying on of an unincorporated business under section 703(a) of the Tax Law.

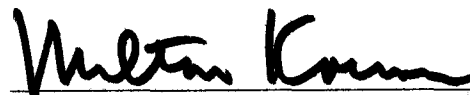
C. That the petition of Lawrence E. Rack is denied and the Notice of Deficiency issued on March 29, 1976 is sustained, together with such additional interest as may be lawfully owing.

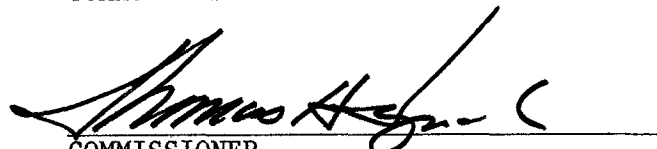
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER