

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Rieker-Madden Real Estate :
and Elizabeth M. Reiker & Lee J. Madden : 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 1970 - 1972. :

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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Rieker-Madden Real Estate, and Elizabeth M. Reiker & Lee J. Madden, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Rieker-Madden Real Estate
and Elizabeth M. Reiker & Lee J. Madden
715 Broadway
Kingston, NY 12401

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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 26, 1979

Rieker-Madden Real Estate
and Elizabeth M. Reiker & Lee J. Madden
715 Broadway
Kingston, NY 12401

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:

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	:	
RIEKER-MADDEN REAL ESTATE	:	DECISION
and	:	
ELIZABETH M. RIEKER and LEE J. MADDEN	:	
Individually and as Co-Partners,	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1970, 1971 and 1972.	:	

Petitioner, Rieker-Madden Real Estate, 715 Broadway, Kingston, New York 12401, 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 1970, 1971 and 1972 (File No. 12331).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on October 23, 1978 at 1:00 P.M. Petitioner appeared by Elizabeth M. Rieker and Lee J. Madden, partners. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the Notice of Deficiency issued for 1970, 1971 and 1972 was barred by the three-year period of limitation of assessment.

FINDINGS OF FACT

1. Petitioner Rieker-Madden Real Estate filed New York State partnership returns for 1970, 1971 and 1972, on which it reported its business activity to be that of real estate brokers. The returns disclosed details of gross income, deductions and ordinary income. The partnership failed to complete the unincorporated business tax portion of said form and marked it "Not Applicable".

2. On July 28, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner Rieker-Madden Real Estate, on the grounds that its activities as real estate brokers were subject to unincorporated business tax. Said Notice asserted unincorporated business tax of \$2,714.61, plus interest of \$574.29, for a sum of \$3,288.90.

3. On August 11, 1975, the Income Tax Bureau received a partial payment of \$2,193.01 from the partnership, which was applied to the Notice of Deficiency issued on July 28, 1975. Petitioner contended that unincorporated business tax was not due for 1970 because the three-year period of limitation had expired.

CONCLUSIONS OF LAW

A. That the returns filed by the partnership provided the information necessary to compute the tax, as well as the details as to the nature of the business activity, which information was sufficient to start the running of the period of limitation established by sections 722 and 683(a) of the Tax Law. The three-year period of limitation on assessment of unincorporated business tax does not apply when no tax return is filed; nor does it apply when a return is filed, but said return does not detail the nature of the business activity. (Matter of Arbesfeld, Goldstein v. State Tax Commission, 62 AD2d 627). The filing requirements are not satisfied by the fact that the information necessary to compute the tax is furnished by a return filed for the purpose of a different tax. (Matter of Hewitt v. Bates, 297 NY 239).

B. That partnership returns were timely filed and the Notice of Deficiency dated July 28, 1975 was erroneous, in that it assessed unincorporated business tax after the period of limitation had expired for 1970 and 1971.

C. That the Income Tax Bureau is hereby directed to modify the Notice of Deficiency to the extent of reducing the deficiency for unincorporated business tax to \$498.45, plus interest of \$86.34, for a total due of \$584.79. The Income Tax Bureau is also directed to refund to petitioner \$1,608.29 which the bureau received on August 11, 1975, together with such additional interest as may be lawfully owing.

D. That the petition of Rieker-Madden Real Estate is granted to the extent indicated in Conclusion of Law "C" and that, except as so granted, is in all other respects denied.

DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER