

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Richard B. Cordes :

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 1973. :

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 12th day of December, 1980, he served the within notice of Decision by certified mail upon Richard B. Cordes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Richard B. Cordes
4 Haynes Blv.
Sidney, NY 13838

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
12th day of December, 1980.

Jean Schutt

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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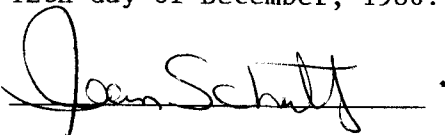
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of December, 1980, he served the within notice of Decision by certified mail upon Robert Rothenberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

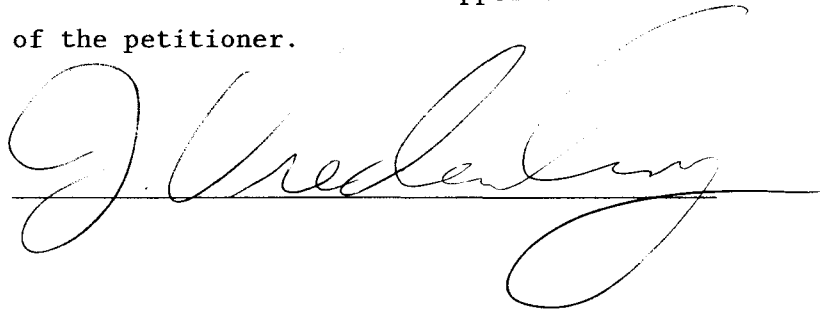
Mr. Robert Rothenberg
Rothenberg & Rothenberg
87 Main St.
Sidney, NY 13838

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
12th day of December, 1980.





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

December 12, 1980

Richard B. Cordes
4 Haynes Blv.
Sidney, NY 13838

Dear Mr. Cordes:

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
Robert Rothenberg
Rothenberg & Rothenberg
87 Main St.
Sidney, NY 13838
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RICHARD B. CORDES	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Year 1973.	:	

Petitioner, Richard B. Cordes, 4 Haynes Boulevard, Sidney, New York, 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 1975 (File No. 17926).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Binghamton, New York, on May 10, 1979 at 2:45 P.M. Petitioner appeared by Robert Rothenberg, Esq. The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUES

I. Whether petitioner, in his purchase and sale of some twelve parcels of real property, was a dealer subject to unincorporated business tax or merely a holder of real property not deemed engaged in an unincorporated business.

II. Whether interest income derived from mortgages is includable in unincorporated business income.

III. Whether petitioner is entitled to an allowance for partner's services for his wife.

FINDINGS OF FACT

1. On December 20, 1976, the Audit Division issued a Statement of Audit

Changes against petitioner, Richard B. Cordes, in which additional unincorporated business tax was found to be due on the grounds that all of petitioner's business income should have been reported as one factor on a single return, that interest income derived from mortgages is considered subject to unincorporated business tax and that where one subdivides real property and sells it he is considered to be a dealer for unincorporated business tax purposes. Accordingly, a Notice of Deficiency was issued in the amount of \$3,404.18, plus interest of \$684.78, for a total of \$4,088.96.

2. Petitioner timely filed a New York State Combined Income Tax Return and an Unincorporated Business Tax Return for 1973. His schedule of installment sales listed nineteen properties, some of which had been sold in prior years.

3. Petitioner, Richard B. Cordes, has been a licensed real estate broker for the past twenty-five years. During the year in issue, he invested the profits from his business in the purchase of real estate. Also, during the year in issue he sold some twelve parcels of real estate that he acquired at various times. Five sales qualified for long-term capital gain treatment and seven sales for short-term capital gain treatment. Petitioner's wife was a licensed salesperson, not a broker. She was neither the proprietor of nor a partner in the brokerage firm.

CONCLUSIONS OF LAW

A. That the purchase and sale of real properties by petitioner, Richard B. Cordes, was so connected and integrated with the unincorporated business of real estate brokerage operated by petitioner as to be deemed a part thereof. Therefore the profit and income from the sales of real property is includable in the gross income of the unincorporated business. (Sections 703(d) and 705(a) of the Tax Law. See also Art. 4, Question 21, Unincorporated Business Income Tax Regulations under Article 16-A of the Tax Law; and 20 NYCRR 203.12(a) added February 1, 1974).

B. That includable in the gross income of an unincorporated business is the collection of installment obligations of the business and the interest income attributable thereto, without regard to the date when such obligations were acquired. (Section 705(a) of the Tax Law. See also 20 NYCRR 205.1(c) added February 1, 1974).

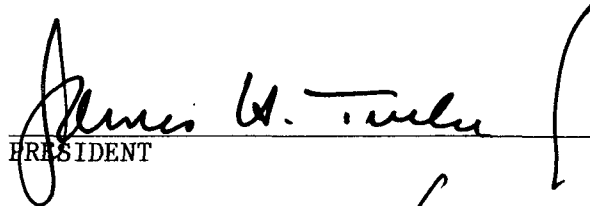
C. That petitioner's wife was neither a partner nor proprietor and is not entitled to an exemption nor an allowance for partner services. (Section 708(a) of the Tax Law. See also 20 NYCRR 208.1(a)).

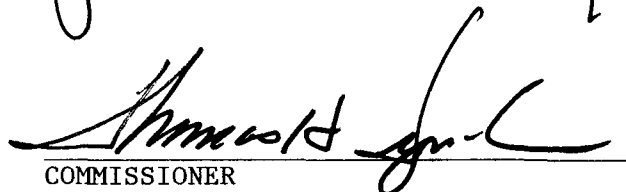
D. That the petition of Richard B. Cordes is denied and the Notice of Deficiency issued December 20, 1976 is sustained.

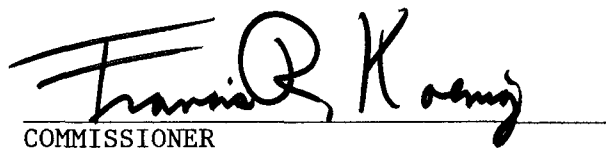
DATED: Albany, New York

DEC 12 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER