

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

W. Raymond Miller :

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon W. Raymond Miller, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

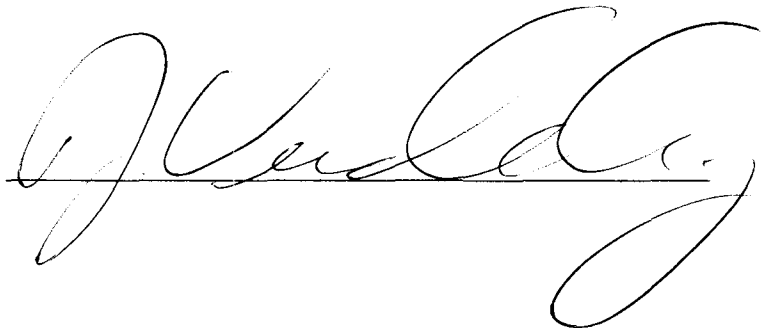
W. Raymond Miller  
81 Utica St.  
Clinton, NY

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 November, 1980.

Deborah A Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

W. Raymond Miller :

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 28th day of November, 1980, he served the within notice of Decision by certified mail upon Gordon P. Jeffery 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. Gordon P. Jeffery  
14 E. Park Row  
Clinton, NY 13323

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  
28th day of November, 1980.

Deborah A Bank

J. Vredenburg

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

November 28, 1980

W. Raymond Miller  
81 Utica St.  
Clinton, NY

Dear Mr. Miller:

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  
Gordon P. Jeffery  
14 E. Park Row  
Clinton, NY 13323  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

W. RAYMOND MILLER :

DECISION

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. :

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Petitioner, W. Raymond Miller, 81 Utica Street, Clinton, 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 years 1970, 1971 and 1972 (File No. 13321).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on May 15, 1980 at 9:15 A.M. Petitioner appeared by Gordon P. Jeffery. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUES

I. Whether the activities of petitioner, W. Raymond Miller, as a real estate broker during 1970 through 1972 constituted the practice of a profession exempt from the imposition of unincorporated business tax, in accordance with the meaning and intent of section 703(c) of the Tax Law.

II. Whether the Notice of Deficiency issued to petitioner should be dismissed on the grounds of laches.

III. Whether the Notice of Deficiency should be dismissed on the grounds that petitioner did not receive the notice of Small Claims Hearing.

FINDINGS OF FACT

1. Petitioner, W. Raymond Miller, and his wife timely filed New York State personal income tax returns for 1970 through 1972. Petitioner, W. Raymond Miller, did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's activities as a real estate broker constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to the unincorporated business tax. It issued a Notice of Deficiency to him on December 23, 1974 in the amount of \$1,345.46 in unincorporated business tax, plus penalty of \$494.08 and interest of \$222.53, for a total due of \$2,062.07.

3. Petitioner filed a petition for redetermination of a deficiency of unincorporated business tax for the years 1970 through 1972 on January 2, 1975. On said petition, petitioner stated his new address to be 81 Utica Street, Clinton, New York and that his representative was Gordon P. Jeffery.

4. On June 24, 1976, petitioner was given notice of hearing for July 21, 1976. Gordon P. Jeffery requested and was granted an adjournment of said hearing.

5. On April 11, 1980, petitioner and his representative were each mailed a final notice of a small claims hearing for May 15, 1980. These notices were not returned by the post office.

6. At the hearing, petitioner's representative presented no evidence as to question of unincorporated business tax, but contended the Notice of Deficiency should be dismissed for undue delay by the State Tax Commission in instituting action.

7. Petitioner's representative further contended that he did not know the whereabouts of the petitioner, W. Raymond Miller, and, therefore, the Notice of Deficiency should be dismissed on the grounds that the State Tax Commission did not prove that petitioner had received a copy of the notice of hearing for May 15, 1980.

CONCLUSIONS OF LAW

A. That petitioner, W. Raymond Miller, failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to establish his activities as a real estate broker constituted the practice of a profession exempt from the imposition of unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law. That petitioner's activities did constitute the carrying on of an unincorporated business within the meaning of section 703(a) of the Tax Law.

B. That the State Tax Commission is not estopped from making a claim against petitioner. A state agency or body cannot be estopped from asserting its governmental power regarding acts within its governmental capacity. That the record in the instant case shows no undue delay by the State Tax Commission in instituting action, therefore, the remedy of laches claimed by petitioner's representative is unfounded.

C. That the State Tax Commission mailed the notice of hearing in accordance with section 691(b) of the Tax Law and, therefore, petitioner's representative's claim that petitioner did not receive said notice is unfounded.

D. That the petition of W. Raymond Miller is denied and the Notice of Deficiency dated December 23, 1974 is sustained, together with such additional penalty and interest which is lawfully owing.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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

November 28, 1980

W. Raymond Miller  
81 Utica St.  
Clinton, NY

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Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Gordon P. Jeffery  
14 E. Park Row  
Clinton, NY 13323  
Taxing Bureau's Representative



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

W. RAYMOND MILLER :

DECISION

for Redetermination of a Deficiency or :  
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Tax under Article 23 of the Tax Law for :  
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III. Whether the Notice of Deficiency should be dismissed on the grounds that petitioner did not receive the notice of Small Claims Hearing.

FINDINGS OF FACT

1. Petitioner, W. Raymond Miller, and his wife timely filed New York State personal income tax returns for 1970 through 1972. Petitioner, W. Raymond Miller, did not file unincorporated business tax returns for said years.

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CONCLUSIONS OF LAW

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B. That the State Tax Commission is not estopped from making a claim against petitioner. A state agency or body cannot be estopped from asserting its governmental power regarding acts within its governmental capacity. That the record in the instant case shows no undue delay by the State Tax Commission in instituting action, therefore, the remedy of laches claimed by petitioner's representative is unfounded.

C. That the State Tax Commission mailed the notice of hearing in accordance with section 691(b) of the Tax Law and, therefore, petitioner's representative's claim that petitioner did not receive said notice is unfounded.

D. That the petition of W. Raymond Miller is denied and the Notice of Deficiency dated December 23, 1974 is sustained, together with such additional penalty and interest which is lawfully owing.

DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

TA 26 (9-79)

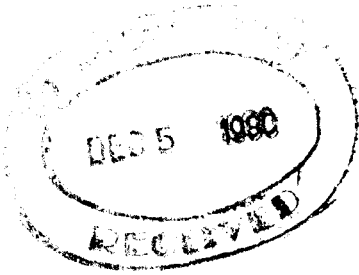
STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

W. Raymond Miller  
81 Utica St.  
Clinton, NY

BIA  
Sent



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

November 28, 1980

W. Raymond Miller  
81 Utica St.  
Clinton, NY

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cc: Petitioner's Representative  
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Clinton, NY 13323  
Taxing Bureau's Representative

## STATE TAX COMMISSION

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DATED: Albany, New York

NOV 28 1980

STATE TAX COMMISSION

*James H. Tully*  
PRESIDENT

*Thomas H. Lee*  
COMMISSIONER

*Francis P. Koenig*  
COMMISSIONER

DEC 8 1980

LAW BUREAU

JEFFERY AND DYLLIS, P. C.

*Attorneys at Law*

GORDON P. JEFFERY - 1951  
DAVID P. DYLLIS - 1976

14 EAST PARK ROW  
CLINTON, NEW YORK 13323  
TELEPHONE 853-2912 OR 853-3112  
AREA CODE 315

December 3, 1980

State of New York  
State Tax Commission  
Albany, New York 12227

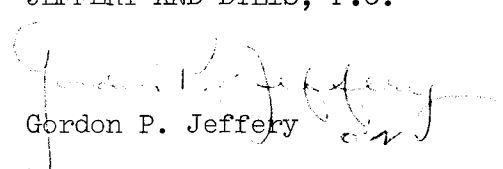
Re: W. Raymond Miller tax matter

Dear Sirs:

Inasmuch as I no longer represent Mr. W. Raymond Miller and no longer know his whereabouts, I return herewith the Decision received recently relative to the above matter.

Very truly yours,

JEFFERY AND DYLLIS, P.C.

  
Gordon P. Jeffery

GPJ:o'n  
encl.