

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALEX ROSENBERG

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the (Year(s) 1965

State of New York  
County of Albany

Martha Funaro, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of July, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Alex Rosenberg (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Alex Rosenberg  
910 Oyster Bay Road  
East Norwich, New York  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

19th day of July, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

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ALEX ROSENBERG

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For a Redetermination of a Deficiency or  
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State of New York  
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 19th day of July , 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Max L. Presser

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Max L. Presser  
201 Floral Avenue  
Plainview, New York 11803

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

19th day of July , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT  
A. BRUCE MANLEY  
MILTON KOERNER

AREA CODE 518  
457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**July 19, 1972**

**Alex Rosenberg  
910 Oyster Bay Road  
East Norwich, New York**

**Dear Mr. Rosenberg:**

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **689 & 722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 Months**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**Paul B. Coburn**

Enc.

HEARING OFFICER

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ALEX ROSENBERG	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22	:	
and 23 of the Tax Law for the Year 1965.	:	

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Petitioner, Alex Rosenberg, has filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1965. (File No. 48039242). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on February 14, 1972 at 1:30 P.M. Petitioner appeared by Max L. Presser, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Alexander Weiss, Esq. of Counsel).

#### ISSUES

I. Did petitioner, Alex Rosenberg, incur liability for additional personal income and unincorporated business taxes for the year 1965 as a result of the sale of two parcels of real estate known as "Regal Oaks" and "65/C/10"?

II. Did petitioner, Alex Rosenberg, for the year 1965, substantiate deductions of \$5,007.38 as claimed business expenses and \$35,000.00 as a section 1244 loss?

#### FINDINGS OF FACT

1. Petitioner, Alex Rosenberg, and his wife filed a New York State combined income tax return for the year 1965. He did not file a New York State unincorporated business tax return for said year.

2. On July 28, 1969 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Alex Rosenberg, imposing additional personal income tax for the year 1965 based upon a determination that the profit reported on the sale of a property known as "65/C/10" in the sum of \$12,603.29 and the profit reported on the sale of a property known as "Regal Oaks" in the sum of \$81,172.10 constituted ordinary income and not capital gains. It also disallowed claimed business expenses in the sum of \$5,007.88 and a claimed section 1244 loss in the sum of \$35,000.00 as unsubstantiated. It further imposed unincorporated business tax upon the profit reported on the sale of the two above-named properties. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$14,389.89.

3. Petitioner, Alex Rosenberg, was a builder. He had been engaged in the business of buying real estate for building ventures since 1950. He constructed various commercial and residential projects in New York City, Long Island and Connecticut.

4. Petitioner, Alex Rosenberg's wife in 1955 acquired a one-half interest in a parcel of real estate located on Long Island, known as "Regal Oaks". She purchased said property from her sister-in-law, Paula Rosenberg. The property was sold in 1960 on an installment basis. The final payment was received in 1965. Her net profit in 1965 as a result of said transaction was \$81,172.10.

5. Petitioner, Alex Rosenberg, acquired in 1957 a parcel of real estate located on Long Island, known as "65/C/10". This property was adjacent to the property known as "Regal Oaks". The property was sold in 1960 on an installment basis. The final payment was received in 1965. His net profit in 1965 as a result of said transaction was \$12,603.29.

6. Petitioner, Alex Rosenberg, failed to submit any documentary or other sufficient evidence to substantiate an alleged loss during the year 1965 of \$35,000.00 resulting from the sale of alleged section 1244 stock that he owned in Jeffery Associates, Inc.

7. Petitioner, Alex Rosenberg, expended during the year 1965, the sum of \$3,007.06 for expenses in connection with his business activities, as indicated by checks issued during said year. In addition, he was entitled to a deduction for automobile depreciation in the sum of \$1,550.00. He failed to substantiate by documentary or other sufficient evidence that he expended as part of his business activities an additional sum of \$450.82 as claimed on his Federal and New York State income tax returns for said year.

#### CONCLUSIONS OF LAW

A. That the profit of the sale of "Regal Oaks" realized during the year 1965 in the sum of \$81,172.10 was not realized by petitioner, Alex Rosenberg, but by his wife who was the owner of an interest in the property and therefore said sum was incorrectly included in his income for personal income and unincorporated business tax purposes.

B. That since petitioner, Alex Rosenberg's acquisition of the parcel of real estate known as "65/C/10" was a part of his regular business as a real estate developer, it did not constitute a capital asset. Therefore the profits realized during the year 1965 as a result of the sale thereof was ordinary income and not capital gains.

C. That since petitioner, Alex Rosenberg's acquisition of the parcel of real estate known as "65/C/10" was acquired as part of his regular business as a real estate developer, therefore the profit realized during the year 1965 as a result of the sale thereof was

subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

D. That petitioner, Alex Rosenberg, failed to substantiate an alleged loss during the year 1965 of \$35,000.00 resulting from the sale of alleged section 1244 stock that he owned in Jeffery Associates, Inc. since he did not submit documentary or other satisfactory evidence sufficient to support his claim and accordingly said deduction was properly disallowed by the Income Tax Bureau.

E. That petitioner, Alex Rosenberg, submitted documentary or other satisfactory evidence sufficient to substantiate the expenditure of \$4,557.06 for ordinary and necessary business expenses during the year 1965 and therefore "claimed business expenses unsubstantiated" as set forth in the Statement of Audit Changes should be reduced from \$5,007.88 to \$450.82.

F. That the petition of Alex Rosenberg is granted to the extent of reducing taxable personal income as corrected for the year 1965 from \$109,906.18 to \$64,763.11 and of reducing additional personal income tax due from \$8,689.00 to \$4,175.25 together with such interest as may be lawfully due, and of reducing taxable unincorporated business tax income for the year 1965 from \$83,282.89 to \$4,688.63, and of reducing unincorporated business tax due from \$3,331.32 to \$175.10 together with such interest as may be lawfully due, and the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued July 28, 1969, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

*July 19, 1972*

STATE TAX COMMISSION

*Norman Gelman*  
COMMISSIONER

*Bruce Manley*  
COMMISSIONER

*Milton Korman*  
COMMISSIONER