

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12226



RETURNED TO ORIGINAL ADDRESS FOR VERIFICATION OF FORWARDING ORDER
Section Checked
Unclaimed Addressee Unknown
Insufficient Address
No such street
No such office in state
Not mailed in this area

David Kravitz

821 Franklin Avenue
Garden City, New York

Handwritten: Newark, N.J. 07102
Handwritten: Paul B. Cohen

- Moved, left no address
- No such number
- Moved, not forwardable
- Addressee unknown

STATE OF NEW YORK
STATE TAX COMMISSION

Schneier
Personal-VBT
16-16-A

In the Matter of the Petition

of
Nat Schneier

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

For a Redetermination of a Deficiency or
a Refund of Personal & Unincorporated
Taxes under Article(s) 16 & 16-A of the
Tax Law for the (Year(s) 1951, 1952, :
1953 and 1954.

State of New York
County of Albany

Claire A. Draves , 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 15th day of January , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Nat Schneier
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Nat Schneier
1116 Beverly Road
Brooklyn, 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

15th day of Januray , 1971

Martha Funnaro

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Nat Schneier

For a Redetermination of a Deficiency or
a Refund of Personal & Unincorporated
Taxes under Article(s) 16 & 16-A of the
Tax Law for the (Year(s) 1951, 1952, :
1953 and 1954

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

State of New York
County of Albany

Claire A. Draves , 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 15th day of Januray , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon David Kravitz (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: David Kravitz
821 Franklin Avenue 134 Jackson St.
Garden City, New York
Rempstead
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

15th day of January , 1971.

Martha Fuxaro

Claire A. Draves

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications

of

NAT SCHNEIER

DETERMINATION

for revision or Refund of Personal Income Taxes under Article 16 and Unincorporated Business Taxes under Article 16-A of the Tax Law for the years 1951, 1952, 1953 and 1954

Applicant, Nat Schneier, has filed applications for revision or refund of personal income taxes under Article 16, and unincorporated business taxes under Article 16-A of the Tax Law for the years 1951, 1952, 1953 and 1954. (File Numbers AA786543, AA786544, B269290 and B417123) A formal hearing was held before Alfred Rubinstein, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on January 18, 1967, at 1:35 P.M. Kravitz & Haselkorn by David Kravitz, CPA appeared for applicant.

FINDINGS OF FACT

1. Applicant, Nat Schneier, filed New York State income tax resident returns for the years 1951 through 1954. He did not file unincorporated business tax returns for those years.
2. On November 24, 1954, the Income Tax Bureau issued notices of additional assessment against applicant, Nat Schneier, imposing unincorporated business taxes upon the income he derived from his real estate and mortgage brokerage business during the years 1951 and 1952 upon the grounds that these activities constituted the carrying on of an unincorporated business and further disallowed capital gain tax and imposed normal tax upon the gain realized on the sales of

mortgages upon the grounds that said mortgages did not constitute a capital asset and accordingly assessed additional tax of \$1,123.33 for the year 1951 and \$740.38 for the year 1952.

3. On April 12, 1957 and April 14, 1958, the Income Tax Bureau issued notices of additional assessment against applicant, Nat Schneier, for the years 1953 and 1954 respectively, imposing unincorporated business taxes and normal income taxes on similar income on the same grounds as in the prior assessments of November 24, 1954 and imposed additional taxes of \$341.39 for the year 1953 and \$727.27 for the year 1954.

4. Applicant, Nat Schneier, during the years 1951 through 1954 was a licensed real estate broker. He was a member of the New York State Appraisers Society, the New Jersey Real Estate Board, the New York Real Estate Board and the Brooklyn Real Estate Board. His only formal education in his field was a one year course on appraisals given by New York University.

5. Applicant, Nat Schneier's, business activities during the years 1951 through 1954 consisted of acting as a broker in the sale of real property and in the sale or initial placing of mortgages on real property. In connection with his mortgage brokerage activities he would participate in a portion of a mortgage or other real estate interest when a client could not or did not want to purchase the whole mortgage or real estate interest. He purchased these participations at the request of his clients or in order to convince them that the mortgages or real estate interests were good investments. Generally, within one year or less he would sell his participations in these mortgages and real estate interests to other of his clients. He held these mortgage participations and real estate interests

primarily for sale to clients in the ordinary course of his business.

CONCLUSIONS OF LAW

A. That applicant, Nat Schneier's, activities as a real estate and mortgage broker during the years 1951, 1952, 1953 and 1954 although requiring special knowledge and experience did not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of Section 386 of the Tax Law.

B. That since applicant, Nat Schneier, during the years 1951, 1952, 1953 and 1954 held participations in various mortgages and other real estate interests primarily for sale to his clients in the ordinary course of his mortgage brokerage business, his profits realized on the sale of said mortgage participations were subject to unincorporated business tax in accordance with the meaning and intent of Section 386 of the Tax Law and 20 NYCRR 281.2 Q. 21.

C. That since applicant, Nat Schneier, during the years 1951, 1952, 1953 and 1954 held participations in various mortgages and other real estate interests primarily for sale to his clients in the ordinary course of his mortgage brokerage business, such mortgage participations were not "capital assets" and the profits realized on the sale thereof were not capital gains in accordance with the meaning and intent of Sections 350 (12) and 350 (13) of the Tax Law, and thus said profits were subject to the normal and not to the capital gains tax rate.

D. That the applications of Nat Schneier are denied and the notices of additional assessment dated November 24, 1954, November 24, 1954, April 12, 1957, and April 14, 1958, respectively are sustained.

DATED: ALBANY, NEW YORK

January 12, 1971.

STATE TAX COMMISSION

Norman Gellman

COMMISSIONER

COMMISSIONER

Walter Krerner

COMMISSIONER