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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT L. HUFFINES, JR. and JANE HUFFINES

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

For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the Year(s) 1960, 1961, 1962,
1963, 1964 and 1965

State of New York
County of Albany

Janet Mack, 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 30th day of October, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert L. Huffines, Jr.
and Jane Huffines (~~representative of~~) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Robert L. Huffines, Jr.
c/o M. J. Weinstein & Company
501 Fifth Avenue

New York, New York 10017
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

30th day of October, 1974

Jesse S. Van Allen _____ *Janet Mack*

STATE OF NEW YORK
STATE TAX COMMISSION

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of

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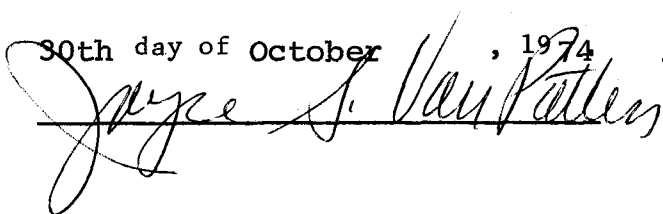
State of New York
County of Albany

Janet Mack, 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 30th day of October, 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Morris J. Weinstein (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Morris J. Weinstein
c/o Morris J. Weinstein, Groothuis & Company
501 Fifth Avenue
New York, New York, 10017
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.

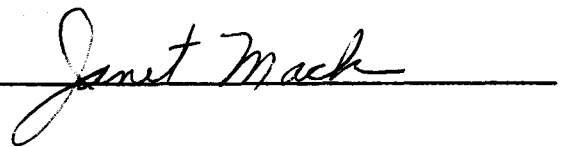
That deponent further says that the said addressee is the (representative of) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

30th day of October, 1974



Joyce S. Van Katten



Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

STATE TAX COMMISSION

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

EDWARD ROOK
SECRETARY TO
COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
October 30, 1974

Mr. & Mrs. Robert L. Haffines, Jr.
c/o M. J. Weinstein & Company
501 Fifth Avenue
New York, New York 10017

Dear Mr. & Mrs. Haffines

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

Please take further notice that pursuant to
Section(s) **690 & 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 S. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :
of :
ROBERT L. HUFFINES, JR. and JANE HUFFINES : DECISION
for a Redetermination of a Deficiency or :
for Refund of Personal Income and Unincor- :
porated Business Taxes under Articles 22 :
and 23 of the Tax Law for the Years 1960, :
1961, 1962, 1963, 1964 and 1965. :

Petitioners, Robert L. Huffines, Jr. and Jane Huffines, have filed petitions 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 years 1960, 1961, 1962, 1963, 1964 and 1965. (File No. 33406544). 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 January 20, 1972, at 9:15 A.M. Petitioners appeared by Morris J. Weinstein, Grootuis & Company, (Ira J. Weinstein, Esq., of counsel). The Income Tax Bureau appeared by Edward H. Best, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUES

I. Did petitioner, Robert L. Huffines, Jr.'s activities as a corporate promoter during the years 1960 through 1965 constitute the carrying on of an unincorporated business?

II. If petitioner, Robert L. Huffines, Jr., was carrying on an unincorporated business during said period, what portion of the income derived therefrom should be allocated to New York State for the purpose of ascertaining personal income and unincorporated business tax liabilities for the years 1960 through 1965?

FINDINGS OF FACT

1. Petitioner, Robert L. Huffines, Jr., filed a New York State income tax nonresident return for the year 1960. Petitioners, Robert L. Huffines, Jr. and Jane Huffines, filed New York State income tax nonresident returns for the years 1961, 1962, 1963, 1964 and 1965. They allocated petitioner, Robert L. Huffines, Jr.'s income for the years 1961 through 1965 based on the number of days he alleged to have worked within and without New York State during said years.

2. On April 11, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert L. Huffines, Jr., imposing unincorporated business tax in the sum of \$24,708.87 and a penalty in the sum of \$6,177.22, pursuant to section 685(a) of the Tax Law, upon the income received by him as a corporate promoter during the years 1960 through 1965. In addition, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Robert L. Huffines, Jr. and Jane Huffines, imposing additional personal income tax for the years 1961 through 1965 in the sum of \$35,139.14. In accordance with the aforesaid statements of audit changes, it issued notices of deficiency in the sums of \$39,212.73 and \$45,911.41, respectively.

3. Petitioner, Robert L. Huffines, Jr., was a corporate promoter during the years 1960 through 1965. During said period he was associated with several large corporations. His corporate associations varied from stockholder to Chairman of the Board of Directors. He was primarily involved in corporate acquisitions, mergers and management activities.

4. During the year 1961, petitioner, Robert L. Huffines, Jr.'s,, gross receipts from his corporate promotion activities consisted of \$15,288.38 from National Bankers Life Insurance Co; \$4,843.13 from Worth Fund, Inc.; \$65,000.00 from Cherokee Securities Corp.; \$12,000.00 from Sesmck Corp.; \$31,667.15 from Binswanger, Inc.; \$6,375.00 from Firth Carpet Co.; \$23,958.37 from Insurance & Industrial Enterprises, Inc.; \$5,000.00 from Baltimore Paint & Chemical, Corp.; \$10,000.00 from Parents Co. He also received director's fees in the amounts of \$5,600.00 from American Broadcasting Corp. and \$2,400.00 from Textron, Inc. His gross income for 1961 totaled \$182,132.03.

5. In 1962, petitioner, Robert L. Huffines, Jr.'s gross receipts from his aforesaid activities were composed of: \$15,288.38 from National Bankers Life Insurance Co.; \$4,179.14 from Worth Fund, Inc.; \$12,000.00 from Sesmck Corp.; \$26,900.68 from Binswanger Corp; \$12,500.00 from Insurance Industrial Enterprises, Inc.; \$19,314.72 from Baltimore Chemical Corp.; \$10,000.00 from Parents Corp.; \$6,249.96 from Guaranty Bank & Trust Co. He also received director's fees in the amounts of \$5,400.00 from American Broadcasting Corp.; \$2,600.00 from Textron, Inc.; \$50.00 from Mercantile National Bank; \$675.00 from National Bankers Life Insurance Co.; \$300.00 from Guaranty Bank & Trust Co. His gross income for 1962 totaled \$115,457.88.

6. In 1963, petitioner, Robert L. Huffines, Jr.'s gross receipts from his aforesaid activities were composed of: \$2,192.30 from National Bankers Life Insurance Co.; \$182,250.00 from Sesmck Corp.; \$6,250.00 from Insurance & Industrial Enterprises, Inc.;

\$28,999.96 from Baltimore Paint & Chemical Corp.; \$10,000.00 from Parents Co.; \$12,500.00 from Guaranty Bank & Trust Co.; \$21,739.59 from B.S.F Corp.; \$6,769.21 from Republic Corp.; \$8,992.21 from Lionel Toy Corp. He also received director's fees in the amounts of: \$5,800.00 from American Broadcasting Corp.; \$3,100.00 from Textron, Inc.; \$450.00 from National Bankers Life Insurance Co.; \$150.00 from Teleprompter, Corp.; \$300.00 from Republic Corp; \$100.00 from B.S.F. Corp. He also received \$18,066.47 in commissions from Binswanger, Inc. His gross income for 1963 totaled \$143,652.74.

7. In 1964, petitioner, Robert L. Huffines, Jr.'s gross receipts from his aforesaid activities were composed of: \$24,500.00 from Sesmck Corp.; \$28,999.92 from Baltimore Paint & Chemical Corp.; \$6,666.64 from Parents Co.; \$12,499.92 from Guaranty Bank & Trust Co.; \$25,000.00 from B.S.F. Corp.; \$14,596.07 from Republic Corp.; \$583.34 from Lionel Toy Corp.; \$45,833.37 from Fifth Avenue Coach Lines, Inc.; \$7,291.69 from East Texas Castings; \$30,000.00 from Mercantile Building. He also received director's fees in the amounts of: \$6,000.00 from American Broadcasting Corp.; \$3,200.00 from Textron, Inc.; \$850.00 from Republic Corp.; \$600.00 from B.S.F. Corp.; \$500.00 from American Steel; \$706.48 from Fifth Avenue Coach Lines, Inc. He also received \$19,557.04 in commissions from Binswanger, Inc. His gross income for 1964 totaled \$227,384.51.

8. In 1965, petitioner, Robert L. Huffines, Jr.'s gross receipts from his aforesaid activities were composed of: \$24,500.00 from Sesmck Corp.; \$6,788.00 from Huron Steel Corp.; \$41,010.07 from Baltimore Paint & Chemical Corp.; \$12,000.00 from Delight Steel Corp.; \$12,500.00 from Guaranty Bank & Trust Co.; \$12,499.98 from

B.S.F. Corp.; \$30,000.00 from Fifth Avenue Coach Lines, Inc.; \$19,375.04 from East Texas Castings; \$35,000.00 from Mercantile Buildings. He also received director's fees in the amounts of: \$6,000.00 from American Broadcasting Corp.; \$3,000.00 from Textron, Inc.; \$100.00 from B.S.F. Corp.; \$300.00 from American Steel; \$600.00 from Fifth Avenue Coach Lines, Inc.

9. During the years 1960 through 1965, petitioner, Robert L. Huffines, Jr., maintained a three-room office in his home in Yemassee, South Carolina. In this suite of rooms, he maintained space for two secretaries and office equipment. From January 1, 1961 to November 1, 1961, he maintained a one-room office in his home in Greenwich, Connecticut. He also maintained an office in New York City in conjunction with various corporations in which he was associated. The nature of his business activities necessitated extensive travel between his offices and to other related cities for which purpose he used his private aircraft.

10. During the year 1961, petitioner, Robert L. Huffines, Jr., worked a total of 259 days, 96 of which were worked in New York State. In 1962, he worked a total of 300 days, 92 of which were worked in New York State. In 1963, he worked a total of 235 days, 91 of which were worked in New York State. In 1964, he worked a total of 300 days, 113 of which were worked in New York State.

11. Petitioner, Robert L. Huffines, Jr., submitted written proof in the form of diaries, to substantiate his claim for allocation for the years 1961, 1962, 1963 and 1964. He failed to submit any proof upon which an allocation could be based for the years 1960 and 1965.

12. Petitioner, Robert L. Huffines, Jr., was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1960 through 1965.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Robert L. Huffines, Jr., during the years 1960 through 1965, constituted income from his regular business of corporate promoter and not income as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Robert L. Huffines, Jr., during the years 1960 through 1965, constituted the carrying on of an unincorporated business and income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That since petitioner, Robert L. Huffines, Jr., carried on his business as a corporate promoter within and without New York State and since he maintained regular places of business outside of New York State during the years 1960 through 1965, therefore, a fair and equitable allocation of his unincorporated business net income must be made in accordance with the meaning and intent of section 707(a) of the Tax Law.

D. That an allocation of 37% of petitioner, Robert L. Huffines, Jr.'s net unincorporated business income for the year 1961 to New York State, 30.6% of his net unincorporated business income for the year 1962, 38.7% of his net unincorporated business income for the year 1963 and 37.5% of his net unincorporated business income for the year 1964, constitutes a fair and equitable allocation of said

income in accordance with the meaning and intent of section 707(d) of the Tax Law and 20 NYCRR 287.1, q. 77. The allocation formulas set forth in sections 707(b) and 707(c) of the Tax Law are not applicable since he did not submit books, records and other evidence that would permit the use of said formulas. He failed to submit any proof upon which a reasonable allocation of income can be based, for the years 1960 and 1965, and therefore, all income for said years is allocated to New York State.

E. That petitioner, Robert L. Huffines, Jr., had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1960 through 1965, and therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

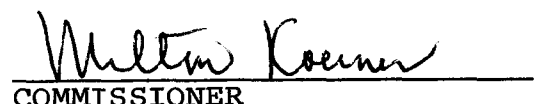
F. That the petitions of Robert L. Huffines, Jr. and Jane Huffines, are granted to the extent of reducing unincorporated business tax due for the year 1961 from \$6,144.51 to \$2,021.47; for the year 1962 from \$3,418.32 to \$768.40; for the year 1963 from \$4,570.11 to \$1,523.43; for the year 1964 from \$3,990.01 to \$1,255.03 and of reducing personal income tax due for the year 1961 from \$9,205.74 to \$389.70; for the year 1962 from \$3,029.91 to \$0.00; for the year 1963 from \$11,174.74 to \$2,341.42 and for the year 1964 from \$6,192.20 to \$594.78, together with such interest as lawfully due and of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law, and except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York
October 30, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER