

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
OSHER CHECHIK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~on Period(s)~~ :
1971 and 1972

State of New York
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Osher Chechik

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Osher Chechik
1728 51st Street
Brooklyn, New York 11200

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

16th day of August, 1977

Marsina Donnini

Janet Bush

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
OSHER CHECHIK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1971 and 1972

State of New York
County of Albany

Marsina Donnini, 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 16th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Efraim Bodek, CPA

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Efraim Bodek
404 Park Ave. So.
New York, NY 10016

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

16th day of August, 1977

Marsina Donnini

Janet M. M. M.



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

August 16, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. Osher Chechik
1728 51st Street
Brooklyn, New York 11200

Dear Mr. Chechik:

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) **690 & 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Paul B. Coburn
Supervising Tax Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
OSHER CHECHIK : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under Articles :
22 and 23 of the Tax Law for the Years 1970, :
1971, and 1972. :

Petitioner, Osher Chechik, 1728 51st Street, Brooklyn, New York 11200, filed a petition, for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1970, 1971 and 1972. (File No. 11721).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 18, 1977 at 2:45 P.M.. The petitioner appeared by Efraim Bodek, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (James Scott, Esq., of counsel).

ISSUES

I. Whether the commissions earned by petitioner, Osher Chechik, for his services as a broker or an intermediary in bringing parties

together in various financial arrangements, constituted income from the conduct of an unincorporated business subject to unincorporated business tax.

II. Whether petitioner, if liable for unincorporated business tax on such income, was able to allocate the income within and without New York where a transaction occurred outside New York and the parties involved were foreign corporations.

FINDINGS OF FACT

1. Petitioner, Osher Chechik, filed New York State resident personal income tax returns for the years 1970, 1971 and 1972. No unincorporated business tax returns were filed by him for those years.

2. On January 29, 1974, the Income Tax Bureau issued a Statement of Audit Changes to petitioner, which it superceded with another such statement on November 24, 1975, incorporating therein 1972 Federal audit changes. Both statements indicated additional unincorporated business tax due of \$630.03, \$1,124.66 and \$5,595.88 for the years 1970, 1971, and 1972, respectively. Penalty under section 685 subdivisions (c) and (a) (1) and (2) was stated on the total additional personal and unincorporated business taxes due. Accordingly, a Notice of Deficiency was issued to petitioners on November 24, 1975 stating additional personal and unincorporated business tax due for the years 1970 through 1972 of \$9,254.07, plus penalties pursuant to section 685 subdivisions (c) and (a) (1) and (2), for a total due at that date of \$14,098.82.

3. The personal income tax due for 1972 was paid by petitioner, and the parties concede that only unincorporated business tax is at issue.

4. Petitioner, Osher Chechik, was a stock broker with the firm of Bruns, Nordeman & Co. for the years in question. He received compensation from that firm of \$13,259.24, \$6,311.22 and \$10,036.90 for 1970, 1971 and 1972, respectively. Expenses reported on his returns for the years 1970 and 1971 totalled \$28,836.38 and \$17,783.26 respectively.

5. Petitioner, Osher Chechik, also reported miscellaneous income and other business income of \$20,568.78, \$30,448.34 and \$100,232.80 for the years 1970, 1971 and 1972, respectively. This income was derived from petitioner's activities as a broker who brought parties together, from fees in the form of finder's fees and from commissions for forwarding business.

6. In 1970, petitioner acted as an introducing broker in a transaction involving the securing of charter parties for two vessels, and was to be paid (per letter agreement of August 23, 1970) \$100,000.00 in five annual installments by Universal Supply Co., Inc. Petitioner received \$28,214.79, \$20,000.00 and \$20,000.00 in 1970, 1971 and 1972, respectively, which money was attributable to this charter arrangement. The sales agreement was executed in Germany and the closing occurred in Switzerland.

7. Petitioner, Osher Chechik, received a fee of \$179,167.00 for introducing the Merban Corporation to United Development, Inc., which fee represented a portion of the profits earned by the former corporation on the sale of notes of a Korean issuer, which notes were purchased from the latter corporation. In 1971, petitioner received \$24,684.38 and in 1972 he received \$105,000.00 attributable to this transaction.

8. Petitioner, Osher Chechik, also received fees and commissions other than those described in Findings of Fact "6" and "7": for arranging a four million dollar time deposit (\$20,000.00 in 1970); from a transaction involving Isamerica (\$1,002.87 in 1970); from Convan for expenses in an unsuccessful financing attempt (\$187.50 in 1970); from one Shukgasser for arranging for the purchase of properties (\$640.30 in 1971); and from Pines for arranging bank financing (\$2,906.84 in 1971).

9. Petitioner, Osher Chechik, did not have private stationary or a separate office for his business other than his stock brokerage office. He deducted rent for space in his home on his income tax returns and did maintain two telephones at his home. Fee and commission arrangements were both oral and written. His duties entailed bringing two parties together or bringing a lender and a

borrower together, as well as attending negotiations and lending his efforts in bringing the negotiations to a successful conclusion, and keeping the parties working towards agreement.

10. Petitioner's employer, Bruns, Nordeman & Co., did not receive any remuneration from other than petitioner's stock transactions.

CONCLUSIONS OF LAW

A. That, after considering all the relevant facts and circumstances, the activities and transactions of petitioner, Osher Chechik, in acting as a broker, intermediary or finder in various business transactions during the years in question, constituted the conduct of an unincorporated business subject to unincorporated business tax. (Tax Law §703(a))

B. That an unincorporated business which is carried on within and without New York can allocate to New York a portion of the excess of its unincorporated business gross income over its unincorporated business deductions. However, if such business has no regular place of business outside New York, all of the excess shall be allocated to New York. (Tax Law §707(a))

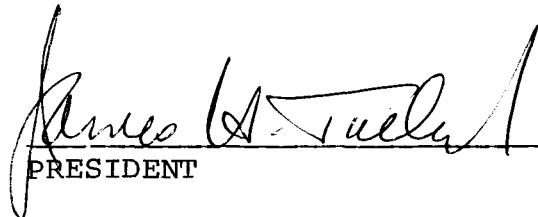
C. That an unincorporated business entity does not have a regular place of business outside New York merely because sales may be made or services performed on behalf of persons or corporations located without the State.

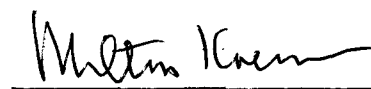
D. That the nature and conduct of petitioner's business does not afford basis for there being a regular place of business outside New York and for an allocation based thereon.

E. That the petition of Osher Chechik is denied and the Notice of Deficiency issued November 24, 1975 is sustained.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER