

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALFRED KOHN

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) ~~XXXXXXX~~ :
1971 & 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 26th day of August, 1977, she served the within

Notice of Decision by (certified) mail upon Alfred Kohn

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Alfred Kohn
1095 Park Avenue
New York, New York

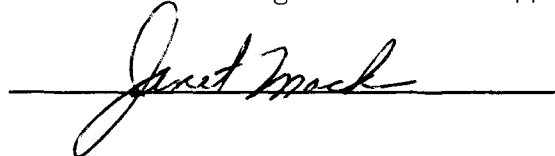
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

26th day of August, 1977.


Marsina Donnini


Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALFRED KOHN

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 & 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 26th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Robert S. Raum, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert S. Raum, Esq.
210 East 52nd Street
New York, New York 10022

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

26th day of August, 1977.

Marsina Donnini

Just Mack



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

August 26, 1977

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

Mr. Alfred Kohn
1095 Park Avenue
New York, New York

Dear Mr. Kohn:

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

ALFRED KOHN : 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 1971 and 1972.

The petitioner, Alfred Kohn, residing at 1095 Park Avenue, New York, New York, 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 1971 and 1972. (File No. 12172).

A formal hearing was held on April 18, 1977 at the offices of the State Tax Commission, Two World Trade Center, New York, New York, at 10:30 A.M. before Solomon Sies, Hearing Officer. The petitioner appeared by Robert S. Raum, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the petitioner's activities during the years in issue constituted the practice of a profession exempt from unincorporated business tax in accordance with the provisions of section 703(c) of the Tax Law.

II. Whether the activities of the petitioner during the years in issue with respect to real estate management constitutes the holding, leasing or managing of real property for ones own account within the intent and meaning of section 703(e) of the Tax Law.

III. Whether the activities of the petitioner during the years in issue constituted the carrying on of an unincorporated business subject to unincorporated business tax within the intent and meaning of section 703(a) of the Tax Law.

IV. Whether reasonable cause exists for the waiver of penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law.

FINDINGS OF FACT

1. The petitioner, Alfred Kohn, filed New York State resident personal income tax returns for the years 1971 and 1972 in which he reported on Schedule A for 1971 miscellaneous income of \$81,819.00 and for 1972 business income of \$35,696.00.

2. On September 29, 1975, the Income Tax Bureau issued a Statement of Audit Changes imposing additional personal income tax of \$906.44 for 1972 based on Federal audit changes and unincorporated business taxes for 1971 and 1972 of \$5,687.58 amounting to \$6,594.02 plus penalty of \$2,218.96 and interest of \$1,306.16 for a total of \$10,119.14 and accordingly issued a Notice of Deficiency therefor. The petitioner timely filed a

petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes for the years 1971 and 1972. The petitioner is not contesting the additional personal income tax due in the amount of \$906.44.

3. During the years 1971 and 1972 and prior thereto, the petitioner was and still is a licensed New York State real estate broker. During the years in issue, the petitioner was engaged in the business of real estate management. In connection with his activities, the petitioner maintained an office at 67 W. 55 Street, New York, New York. He also employed help in connection with his management activities. He did not employ any real estate sales persons in connection with his real estate brokerage business.

4. During the years in issue, Mr. Kohn was the sole stockholder of the following corporations (a) All Eastern Brokerage Corp.; (b) Alfred Kohn Management Corp.; (c) Alfred Kohn Co. Inc. and (d) Alfred Kohn Realty Co. Inc.

5. The petitioner took courses in real estate and studied for the examination to qualify as a licensed real estate broker. He has lectured on real estate at New York University and has written articles for various real estate trade papers and magazines. He is affiliated with the New York City Realty Board and the New York State Realty Board.

6. In 1971, the petitioner received from 1150 Park Avenue Corp. \$85,000.00 as commissions in connection with his brokerage activities on behalf of said corporation. Mr. Kohn had no financial interest in that corporation. He also received in 1971, \$6,000.00 from Alfred Kohn Management Inc. as a management fee. In 1971, Mr. Kohn's compensation as indicated above amounted to \$91,000.00, less \$9,181.00 expenses for a net of \$81,819.00 which was reported by him at Item 8 (Miscellaneous Income) on Schedule A of his New York return for said year. He also reported wages of \$18,100.00 consisting of compensation received from All Eastern Brokerage Corp. in the amount of \$2,500.00 and from Alfred Kohn & Co. Inc. in the amount of \$15,600.00.

7. In 1972, Mr. Kohn received from Alfred Kohn Realty Corp. wages (as indicated on W2 form) in the amount of \$30,100.00 which was included in his Federal Schedule C. He had indicated on the aforementioned Schedule C, gross receipts of \$79,898.00 and net profit from real estate brokerage and real estate management fees of \$65,796.00. He deducted rent, insurance, commissions, telephone, office supplies and expenses and entertainment, etc. His total expenses for said year were \$14,102.00.

8. Mr. Kohn was advised by his accountant who prepared his tax returns that he was not subject to unincorporated business tax.

He relied upon such advice. The failure to file an unincorporated business tax return and pay unincorporated business tax was due to reasonable cause.

9. The corporations of which the petitioner was sole stockholder also entered into agreements with other corporations to manage their properties.

10. The petitioner contends that his activities during the years in issue constitute the practice of an exempt profession. He further contends that the management fees received from the corporations in which he was sole stockholder constitute the holding, leasing or managing of real property for his own account exempt from unincorporated business tax in accordance with the provisions of section 703(e) of the Tax Law.

11. During the years in issue, the petitioner, Alfred Kohn, was not an owner or lessee of real property engaged in the holding, leasing or managing of property for his own account.

CONCLUSIONS OF LAW

A. That the petitioner is not entitled to a professional exemption from the unincorporated business tax in accordance with the intent and meaning of section 703(c) of the Tax Law since he presented no evidence that his activities in the field of real estate brokerage and real estate management require knowledge of an advanced type in a given field of science or learning which could

be gained only by a prolonged course of instruction or study.

McMahan v. State Tax Commission, 45AD 2d 624, 360 NYS 2d 495;

Rosenbloom v. State Tax Commission, 44 AD 2d 69, 353 NYS 2d 544,

B. That the activities of the petitioner during the years in issue with respect to real estate management did not constitute the holding, leasing or managing of real property for ones own account within the intent and meaning of section 703(e) of the Tax Law.

C. That the activities of the petitioner during the years 1971 and 1972 with respect to real estate management and real estate brokerage constituted the carrying on of an unincorporated business within the intent and meaning of section 703(a) of the Tax Law. (Schirrmeister's Estate 8 AD 2d 180, reargument and appeal denied, 9 AD 2d 601, leave to appeal denied 7 NY 2d 708).

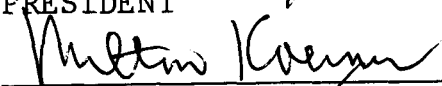
D. That the application of Alfred Kohn is granted to the extent that the penalties under section 685(a)(1) and 685(a)(2) of the Tax Law be and the same are hereby cancelled; that the Income Tax Bureau is directed to modify the Notice of Deficiency and that as except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER