

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Hyman & Fay Green

:

:

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
& UBT under Article 22 & 23 of the Tax Law for :  
the Years 1970, 1971 & 1973

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of June, 1981, he served the within notice of Decision by certified mail upon Hyman & Fay Green, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hyman & Fay Green  
1601 NE 114th St., Unit 2004  
North Miami, FL 33161

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
5th day of June, 1981.

*Annice R. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Hyman & Fay Green :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
& UBT under Article 22 & 23 of the Tax Law for :  
the Years 1970, 1971 & 1973

State of New York  
County of Albany

Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of June, 1981, he served the within notice of Decision by certified mail upon Jack Mitnick the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Jack Mitnick  
3000 Marcus Ave.  
Lake Success, NY 11040

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  
5th day of June, 1981.

*Cornie A. Hagelund*

*J. Vredenburg*

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

June 5, 1981

Hyman & Fay Green  
1601 NE 114th St., Unit 2004  
North Miami, FL 33161

Dear Mr. & Mrs. Green:

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:

NYS Dept. Taxation and Finance  
Deputy Commissioner and Counsel  
Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Jack Mitnick  
3000 Marcus Ave.  
Lake Success, NY 11040  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	DECISION
HYMAN GREEN AND FAY GREEN	:	
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	:	
1973.	:	

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Petitioners, Hyman Green and Fay Green, 1601 Northeast 114th Street, Unit 2004, North Miami, Florida 33161, have 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 1973 (File No. 18187).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 23, 1980 at 10:45 A.M. Petitioners appeared by Jack Mitnick, Esq. The Income Tax Bureau appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner Hyman Green's unincorporated business had a regular place of business without New York for purpose of allocation of income for 1973.

FINDINGS OF FACT

1. Petitioners, Hyman Green and Fay Green, filed an amended New York Resident Return for 1970 and New York State resident returns for 1971 and 1973. Petitioner Hyman Green filed unincorporated business tax returns for each of

subject years on which returns he reported his occupation as a real estate broker and promoter.

2. On December 20, 1976, the Audit Division issued a Statement of Audit Changes together with a Notice of Deficiency to petitioners disclosing an overpayment in personal income tax of \$3,482.38 for 1970; additional interest due of \$550.35 based on federal adjustment for 1970 and 1971; unpaid tax of \$490.72 for 1971 and unincorporated business tax of \$4,229.94 for 1973, based on petitioner Hyman Green's failure to establish that he had a place of business without New York State, for a net amount of tax due of \$1,788.63 plus interest of \$617.82, for a total of \$2,406.45.

3. Petitioners stipulated at the hearing that the overpayment in personal income tax for 1970, interest due based on Federal adjustment for 1970 and 1971 and unpaid tax for 1971 were properly computed. In addition, petitioners also stipulated that they were domiciliaries of New York for years at issue.

4. It was petitioner Hyman Green's position that the commissions earned by him from his unincorporated business for 1973 were, in total, from an office he maintained in the State of Florida, and, were not allocable to New York State.

5. Petitioner Hyman Green was self-employed as a real estate broker and promoter during 1973. Petitioner was licensed to sell real estate in the States of New York and Florida.

6. The office used by petitioner in Florida was allegedly provided him by Causeway Construction Company (hereinafter "Causeway"), a Florida corporation. Petitioner was Causeway's principal officer/stockholder until April 30, 1973, on which date petitioner gifted his stock interest in said entity to his children.

7. The office allegedly used by petitioner in Florida was maintained in the name of Causeway. Petitioner's name did not appear as a lessee of said office, nor did his business cards and letterheads indicate that he conducted business from said premises. Petitioner did not reimburse the lessee of said premises for any rental or any overhead expense.

Petitioner contended that in exchange for use of office provided him by Causeway he continued as a consultant with the corporation. i.e. he continued to negotiate on behalf of the entity for acquisition of building material and additional land; he acted as surety for construction bonds made by banks to Causeway and let contracts to general contractors for construction of buildings.

8. Petitioner Hyman Green for 1971 and 1973 filed federal form 1040, Schedule C's. On said forms, petitioner's business address was shown as 250 Park Avenue, New York. The business address shown on petitioner's federal form was the same as National Development Corporation, a New York entity in which petitioner was its principal officer/stockholder. He did not pay rent for this premises. Petitioner's unincorporated business tax returns for 1971 and 1973 also listed his business address as 250 Park Avenue, New York. The preparers of petitioner's tax returns were located in New York.

9. Petitioner did not offer evidence to show that he had a regular place of business outside New York State.

#### CONCLUSIONS OF LAW

A. That petitioner Hyman Green failed to establish that his unincorporated business had a regular place of business without New York State for 1973 in accordance with the meaning and intent of section 707(a) of the Tax Law. A regular place of business is, inter alia, any bona fide office which is systematically and regularly used by the unincorporated business entity in

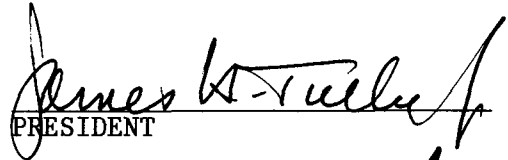
carrying on its business. Since the petitioner has no regular place of business outside this state, all of such business income shall be allocated to New York.

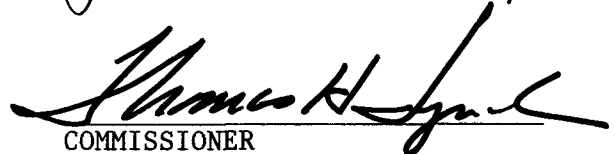
B. That the petition of Hyman Green and Fay Green is denied, and the Notice of Deficiency issued December 20, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JUN 5 1981

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

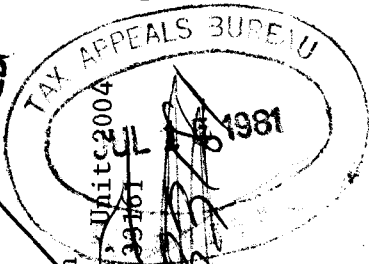
TA 26 (9-79)

STATE OF NEW YORK  
State Tax Commission  
TAX APPEALS BUREAU

STATE CAMPUS  
ALBANY, N. Y. 12227



**UNCLAIMED**



Payman & Fay Green  
1600 NE 114th St., Unit C2004  
North Miami, FL 33161

CLAIM CHECK  
NO.

☐ HOLD

DATE

6/25/81  
1ST NOTICE

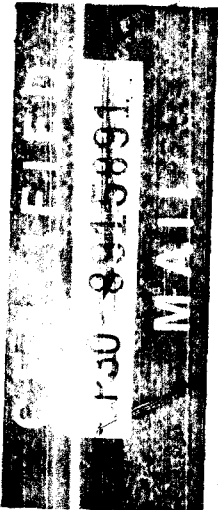
2ND NOTICE

RETURN

2-10

Detached from  
PS Form 3849-A  
May 1979

**UNCLAIMED**





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

June 5, 1981

Hyman & Fay Green  
1601 NE 114th St., Unit 2004  
North Miami, FL 33161

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Albany, New York 12227  
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
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STATE OF NEW YORK

STATE TAX COMMISSION

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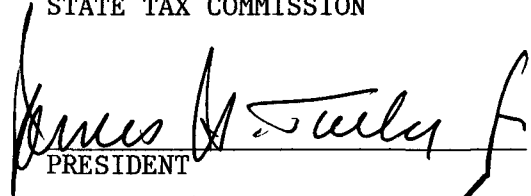
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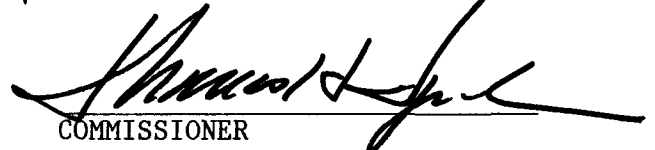
B. That the petition of Hyman Green and Fay Green is denied, and the Notice of Deficiency issued December 20, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

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STATE TAX COMMISSION

  
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