

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hyman J. Schwartz and Herman Siegel :
d/b/a Morris Schwartz & Sons :
: AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax & UBT under Article 22 & 23 of the Tax Law for :
the Years 1973 - 1974. :

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 31st day of July, 1981, he served the within notice of Decision by certified mail upon Hyman J. Schwartz and Herman Siegel, d/b/a Morris Schwartz & Sons the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hyman J. Schwartz and Herman Siegel
d/b/a Morris Schwartz & Sons
80 Wall St.
New York, NY 10005

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
31st day of July, 1981.

Annie Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hyman J. Schwartz and Herman Siegel :
d/b/a Morris Schwartz & Sons :
: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax & UBT under Article 22 & 23 of the Tax Law :
for the Years 1973 - 1974.

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 31st day of July, 1981, he served the within notice of Decision by certified mail upon Norman J. Steinberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Norman J. Steinberg
Steinberg, Clyne & Jaffe
80 Wall St.
New York, NY 10005

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
31st day of July, 1981.

Pamela A. Hagelund

J. Vredenburg

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

July 31, 1981

Hyman J. Schwartz and Herman Siegel
d/b/a Morris Schwartz & Sons
80 Wall St.
New York, NY 10005

Gentlemen:

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) 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
Norman J. Steinberg
Steinberg, Clyne & Jaffe
80 Wall St.
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MORRIS SCHWARTZ & SONS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1973	:	
and 1974.	:	

Petitioner, Morris Schwartz & Sons, 80 Wall Street, New York, New York 10005, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1973 and 1974 (File No. 19184).

On March 16, 1981, petitioner advised the State Tax Commission, in writing, that it desired to waive a small claims hearing and to submit the case to the State Tax Commission, based on the entire record contained in the file.

ISSUE

Whether petitioner, Morris Schwartz & Sons, may allocate a portion of its income to sources without New York State.

FINDINGS OF FACT

1. Morris Schwartz & Sons, (hereinafter the partnership) timely filed New York State partnership returns for the years 1973 and 1974 whereon it allocated a substantial portion of its income to sources without New York State. Said portion was purportedly derived from a branch office located at 1018 Haral Place, Cherry Hill, New Jersey. Based on its allocation, as filed, no unincorporated business tax was computed to be due.

2. On April 11, 1977 the Audit Division, issued a Statement of Audit Changes to the partnership wherein, it held that "the partnership does not

maintain a bona fide place of business outside New York State." Based on said holding, the partnership's allocation was disallowed, and all income derived therefrom was considered subject to the unincorporated business tax. Accordingly, a Notice of Deficiency was issued against the partnership under the same date asserting unincorporated business tax of \$2,141.97, plus interest of \$413.91, for a total due of \$2,555.88.

3. The partnership, which conducted business at 80 Wall Street, New York City, was engaged in the activities of real estate investment advising and engineering. Hyman J. Schwartz and Herman J. Siegel were the sole partners and shared equally in the profits and losses.

4. The partnership claimed to have maintained a bona fide business office at the personal residence of Herman J. Siegel. Such office was purported to comprise the entire lower floor of said residence located at 1018 Haral Place, Cherry Hill, New Jersey.

5. The following income was purported to have been derived by Herman J. Siegel and attributable to his New Jersey office:

- a. 1973 engineering fees of \$2,770.30.
- b. 1973 salary of \$12,369.24 derived from employment with RCA.
- c. 1974 engineering fees of \$20,939.00 attributable to a joint venture between Herman J. Siegel and ASE, Inc., 5090 Central Highway, Airport Industrial Park, Pennsauken, New Jersey

6. The partnership additionally contended that it maintained an office in Essex, Maryland. Said office was purportedly used by Hyman J. Schwartz several days per week with respect to the management of substantial real estate holdings located in the vicinity.

CONCLUSIONS OF LAW

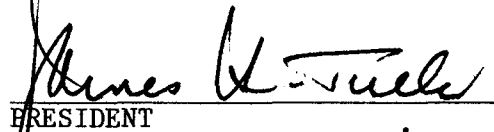
A. That petitioner, Morris Schwartz & Sons, failed to sustain its burden of proof required pursuant to section 689(e) of the Tax Law, to show that it maintained a regular place of business without New York State which was used regularly and systematically by the partnership in carrying on its business pursuant to 20 NYCRR 207.2(a). Accordingly, the partnership is not properly entitled to allocate a portion of its income to sources without New York State within the meaning and intent of section 707(a) of the Tax Law.

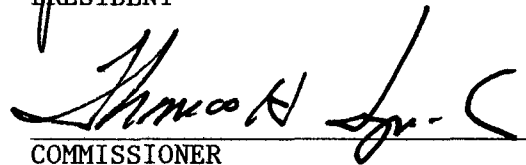
B. That the petition of Morris Schwartz & Sons is denied and the Notice of Deficiency dated April 11, 1977 is sustained together with such additional interest as may be lawfully owing.

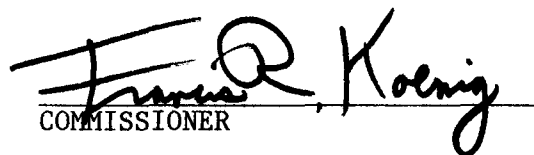
DATED: Albany, New York

JUL 31 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER