

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

David Druckman :

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 1972, 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 26th day of November, 1982, he served the within notice of Decision by certified mail upon David Druckman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

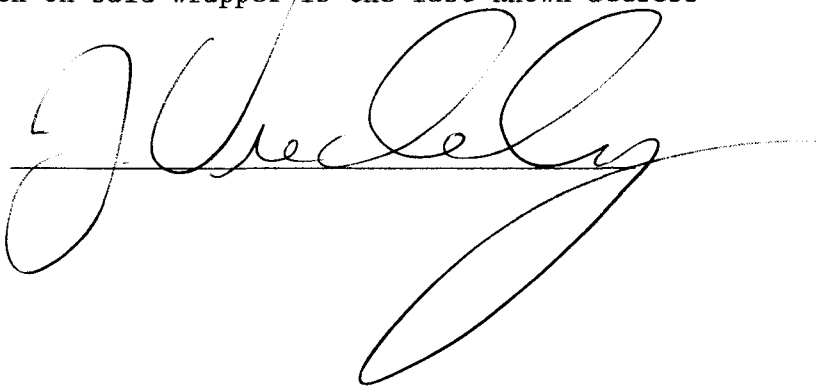
David Druckman  
930 Park Ave.  
New York, NY 10028

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  
26th day of November, 1982.





APPROPRIATE TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of

David Druckman :

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 1972, 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 26th day of November, 1982, he served the within notice of Decision by certified mail upon S. Sidney Mandel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

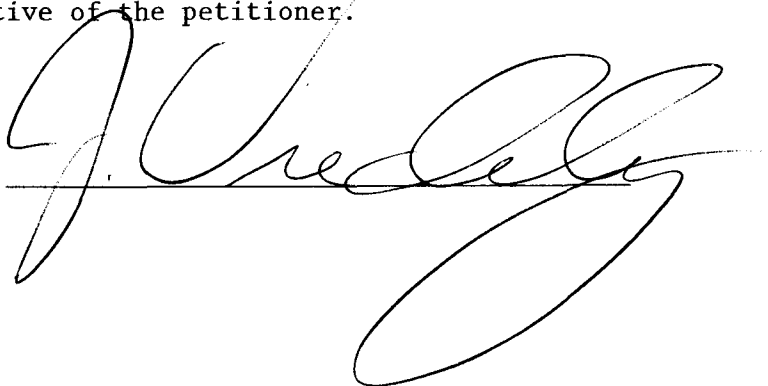
S. Sidney Mandel  
100 Park Ave.  
New York, NY 10017

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 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 November, 1982.





ADMINISTERED TO ADMINISTER  
COMMISSIONER PURSUANT TO TAX LAW  
SECTION 174

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

November 26, 1982

David Druckman  
930 Park Ave.  
New York, NY 10028

Dear Mr. Druckman:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
S. Sidney Mandel  
100 Park Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DAVID DRUCKMAN	:	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 1972, 1973 and 1974.	:	

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Petitioner, David Druckman, 930 Park Avenue, New York, New York 10028, 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 1972, 1973 and 1974 (File No. 19413).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 21, 1980 at 3:15 P.M. and concluded on November 24, 1980 at 11:00 A.M. Petitioner appeared by S. Sidney Mandel, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUES

- I. Whether salaries and fees received by petitioner from various furniture companies are subject to unincorporated business tax.
- II. Whether petitioner's reported distributable share of partnership income from Druckman Associates should be increased.
- III. Whether certain losses from partnerships in which petitioner had an interest should be allowed.
- IV. Whether the adjustment to itemized deductions was proper.
- V. Whether a net operating loss carryforward should be allowed.

FINDINGS OF FACT

1. Petitioner herein, David Druckman, and his wife, Charlotte Druckman (deceased), were residents of the City and State of New York for the years 1972, 1973 and 1974. They timely filed Form IT-201 New York State income tax resident returns for each year in issue. David Druckman indicated he was an executive and Charlotte Druckman a housewife.

2. On April 11, 1977, the Audit Division issued a Notice of Deficiency to petitioner with an explanatory Statement of Audit Changes for the tax years 1972 through 1974 asserting personal income and unincorporated business taxes of \$23,849.30, penalties, pursuant to section 685(a)(1) and (a)(2) of the Tax Law, of \$5,590.74, and interest of \$4,632.02, for a sum of \$34,072.06.

3. The asserted amounts due for the years in issue are as follows:

	<u>Deficiency</u>	<u>Penalty</u>
1972 -	\$ 3,278.00	\$1,524.27
1973 -	3,146.00	1,274.13
1974 -	17,425.30	2,792.34
	<u>\$23,849.30</u>	<u>\$5,590.74</u>

4. Annexed to the Statement of Audit Changes was a Schedule of Audit Adjustments stating as follows:

<u>Explanation of Adjustments</u>	<u>Personal Income</u>	<u>Unincorporated Business</u>
1972		
The taxpayer's income received from the various furniture companies is held to be subject to unincorporated business tax - per return		69600
Salary credit - maximum allowed		(5000)
Exemption allowed		(5000)
Total Adjustment Per Audit		<u>59600</u>
1973		
Income subject to unincorporated income tax - per return		67200

Salary credit - maximum allowed	(5000)
Exemption allowed	(5000)
Total Adjustment Per Audit	<u>57200</u>

Partnership loss disallowed - per return	<u>112534</u>
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1974

Partnership income from Druckman Associates increased - per audit	4386
U.B.T. modification omitted	3040

Losses from partnerships disallowed as follows:

Sutton Portsmouth	6585	
Kilmer	174949	
Fair Equity	1264	
Park Plaza	1198	
Stelton	160170	
Roxbury	<u>1023</u>	345189

Net operating loss carry forward reduced by 1973 disallowance as above	112534
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Adjustments disallowed (employee business expenses)	6730
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Itemized deductions - Total	33413
Less: Modification for alloc. exp.	(12089)
Income taxes	<u>( 6373)</u>

N.Y. itemized deductions	(14951)
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Exemptions: 2 x 650	( 1300)
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Total adjustment per audit	<u>455628</u>
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The taxpayer's income received from the various furniture companies is held to be subject to unincorporated business tax - per return

87400

Income from partnership - Druckman Associates is held to be part of his business activities:

Distribution per audit	68039
N.Y. State U.B.T.	<u>1720</u>

69759

Salary credit

(5000)

Exemption

(5000)

Total Adjustment Per Audit

147159

5. Also, annexed to the Statement of Audit Changes was the following Tax

Computation Schedule:

Tax Year or Period Ended.....	1972	1973	1974
Type of Return.....	IT202	IT202	IT202

PERSONAL INCOME

Net adjustment per audit.....	\$ 112,534	\$ 455,628
Taxable income previously stated.....	(283,485)	(382,151)
Corrected taxable income.....	\$(170,951)	\$ 73,477
Tax on corrected taxable income.....	\$ -0-	\$ 9,331.55
Less statutory credit.....	\$ -0-	\$ -0-
Corrected tax due.....	-0-	9,331.55
Overassessment.....		
Penalty @ ____%.....		

UNINCORPORATED BUSINESS

Net adjustment per audit.....	\$59,600	\$ 57,200	\$ 147,159
Taxable business income previously stated.....	-0-	-0-	-0-
Corrected taxable business income.....	\$59,600	\$ 57,200	\$ 147,159
Tax at 5½%.....	\$ 3,278.00	\$ 3,146.00	\$ 8,093.75
Less business tax credit.....	-0-	-0-	-0-
Corrected unincorporated business tax due.....	3,278.00	3,146.00	8,093.75
Unincorporated business tax previously computed..	-0-	-0-	-0-
Deficiency.....	<u>\$ 3,278.00</u>	<u>\$ 3,146.00</u>	<u>\$ 8,093.75</u>

6. The audit report claimed that petitioner's income received from the various furniture companies listed below was subject to unincorporated business tax. He received the following salaries from the various entities during the taxable years 1972, 1973 and 1974.

<u>Company</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>
Century Case Goods Co., Inc.	\$ 4,800	\$ 4,800	\$25,000
Pilgrim Furniture Co., Inc.	21,600	21,600	21,600
D & R Furniture Sales, Inc.	37,800	37,800	15,625
New York Furniture Exchange, Inc.	3,000	3,000	3,000
Druckman Associates	0	0	22,175
New York Furniture Exchange (director's fees)	<u>2,400</u>	<u>0</u>	<u>0</u>
Total	\$69,600	\$67,200	\$87,400

7. Century Case Goods Co., Inc., a Connecticut corporation with its principal office in Stamford, Connecticut, is in the business of distributing furniture in the Northeast portion of the United States. During the years in question petitioner was president of the corporation. In addition to petitioner, said corporation employed ten employees and used approximately ten independent commission salesmen. The corporation had gross sales in 1972, 1973 and 1974 of \$2,657,574.42, \$2,967,283.90 and \$2,860,575.78, respectively. Petitioner owns approximately 50 percent of the Common Stock of Century Case Goods Co., Inc. and the balance is owned by several other shareholders.

8. Pilgrim Furniture Co., Inc., a New York corporation with its principal office in Kingston, New York, is engaged in the business of manufacturing upholstered furniture. It transacts its sales to dealers through independent commission salesmen. Petitioner is the treasurer of Pilgrim Furniture Co., Inc. and is in charge of design, merchandising and labor relations. Petitioner owns 50 percent of the common stock of said corporation and the other 50 percent is owned by the president of the corporation, Max Kligman, who is unrelated to petitioner. In 1972, 1973 and 1974 the gross sales of Pilgrim Furniture Co., Inc. were \$2,505,000, \$2,247,000 and \$2,205,000, respectively. Pilgrim Furniture Co., Inc. employs approximately 75 persons in various capacities.

9. D & R Furniture Sales, Inc. was a New York corporation which, during the years in question, acted as representative for Bassett Furniture Industries, Inc. of Bassett, Virginia. It was solely a sales agency for Bassett and did not represent any other lines. The two principals of D & R were petitioner and one Stanley Rosenberg. In addition to petitioner and Mr. Rosenberg, D & R employed 8 independent commission salesmen and approximately 4 in-office help. Petitioner owned 60 percent of the common stock of the corporation and Stanley



Rosenberg, who is unrelated to petitioner, owned 40 percent of the common stock.

10. Petitioner is treasurer and a director of New York Furniture Exchange, Inc., a New York corporation, which is in the business of owning the land and building known as 200 Lexington Avenue, New York, New York, which is a 16-story office building commonly referred to as The New York Furniture Exchange. The corporation owns said building and leases space to various tenants. As a director and treasurer of said corporation, petitioner renders advisory services to the corporation and its board of directors. The corporation has numerous unrelated shareholders. Petitioner owns less than 1 percent of the common stock of the corporation.

11. Druckman Associates is a partnership which was formed in 1974 consisting of petitioner and his son, James Druckman. Its predecessor related entities were D & R Furniture Sales, Inc., a corporation, and D & R Sales Associates, a partnership. Druckman Associates is a sales agency for Bassett Furniture Industries, Inc. In addition to the two partners, the partnership employs approximately 3 in-office help and 8 commission salesmen. Gross income earned during 1974 was \$228,607.15. Petitioner had an eighty percent share in the partnership and his son had a twenty percent share. Petitioner's son purchased his twenty percent share of Druckman Associates from his father for twenty thousand dollars, payable over a period of twenty years at the rate of one thousand dollars per year.

12. The Schedule of Audit Adjustments increased the partnership income from Druckman Associates attributed to petitioner in the amount of \$4,386.00. Although an audit of the Druckman Associates partnership income tax return for 1974 was commenced in or about June, 1976, and the representative of said

partnership supplied the necessary data requested by the auditor reviewing said return, no response was received from the auditor and no Statement of Audit Changes was issued for Druckman Associates for said year. No explanation was given in the Statement of Audit Changes or the Explanation of Adjustments, herein, concerning the reasons for the increase. Accordingly, petitioner was unable to make any statement of facts relating to this item since he had not been advised of the reason for the change.

13. Petitioner maintained that Druckman Associates was a viable partnership between himself and his son James and that his failure to report his share of the unincorporated business tax modification in the sum of \$3,040.00 was an oversight, although said tax had in fact been paid.

14. During the tax years in issue, petitioner was also a partner in numerous New Jersey limited partnerships which owned and operated real estate. The Explanation of Adjustments disallows losses reported by petitioner during 1974 as a distributive share of total partnership loss in the partnerships known as Sutton Portsmouth Associates, Sutton Kilmer Associates, Sutton Fair Equity Associates, Sutton Park Plaza Associates, Sutton Stelton Associates and Sutton Roxbury Associates of \$345,189 for 1974. While the auditor herein disallowed these losses, she nevertheless continued to include in petitioner's income the amounts reported as taxable income by petitioner of his distributive share of other similar partnerships.

15. No reason was ever given for the disallowance of losses allocated to petitioner by the New Jersey partnerships for 1973 and 1974.

16. The Explanation of Adjustments indicated that petitioner's total 1974 itemized deductions were \$33,413.00 and, thereafter, reduced the sum by a modification for allocable expenses in the sum of \$12,089.00 and for income

taxes in the sum of \$6,373.00. Thus the auditor herein concluded that the allowable New York State itemized deductions for 1974 amounted to \$14,951.00. There is no evidence herein setting forth a basis for the auditor taking this action. A copy of petitioner's Federal income tax return for 1974, which was submitted into evidence, discloses that itemized deductions were \$14,629.00.

17. The witness for the Audit Division testified to the effect that the Statement of Audit Changes was issued before the audit herein was completed because the petitioner refused to submit a waiver to extend the time during which the asserted tax deficiencies herein could be assessed.

18. The Audit Division's witness was not the original auditor herein; the original auditor having retired from the Department of Taxation and Finance prior to the hearing.

19. There is no evidence that the Internal Revenue Service issued any notices of deficiency for the tax years in issue.

20. Petitioner maintained that the audit changes herein were arbitrary and capricious except for his failure to report his share of Druckman Associates' unincorporated business tax deduction in the amount of \$3,040.00; the Audit Division did not refute this contention.

#### CONCLUSIONS OF LAW

A. That with the exception of the adjustment pertaining to the omission of the unincorporated business tax modification to personal income of \$3,040.00 for 1974, the audit changes in issue herein are in fact arbitrary and capricious since the record herein fails to reflect a basis in fact for the issuance of the asserted deficiencies in issue herein. (Oscar J. Brown v. New York State Tax Commission, 279 A.D. 837, affirmed 304 N.Y. 651).

B. That the petition herein is granted to the extent indicated above and the Notice of Deficiency dated April 11, 1977 is to be modified accordingly.

DATED: Albany, New York

NOV 26 1982

STATE TAX COMMISSION

*Acting* Robert A. Balmori  
PRESIDENT

Francis D. Koenig  
COMMISSIONER

Mark J. [Signature]  
COMMISSIONER