

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Rudolph Hirsch :
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 :
Year 1973. :

AFFIDAVIT OF MAILING

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 11th day of June, 1982, he served the within notice of Decision by certified mail upon Rudolph Hirsch, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

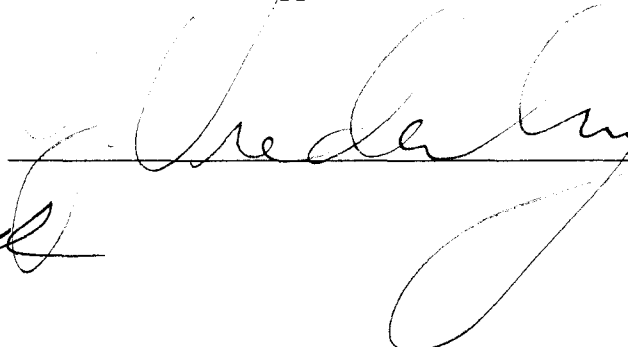
Rudolph Hirsch
7504 Jewel Ave.
North Bay Village, FL 33141

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
11th day of June, 1982.





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

June 11, 1982

Rudolph Hirsch
7504 Jewel Ave.
North Bay Village, FL 33141

Dear Mr. Hirsch:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

RUDOLPH HIRSCH

DECISION

for Redetermination of a Deficiency or for
Refund of Personal Income Tax and Unincorporated:
Business Tax under Articles 22 and 23 of the
Tax Law for the Year 1973.

Petitioner, Rudolph Hirsch, 7504 Jewel Avenue, North Bay Village, Florida 33141, filed a petition for redetermination of a deficiency or for refund of personal income tax and unincorporated business tax under Articles 22 and 23 of the Tax Law for the year 1973 (File No. 19444).

On July 13, 1981 the petitioner advised the State Tax Commission, in writing, that he waived a formal hearing herein and consented to the issuing of a decision based on the entire record contained in the file.

ISSUES

I. Whether the income from petitioner's activities as an insurance broker is subject to unincorporated business tax.

II. Whether petitioner is required to pay minimum income tax on a long term capital gain.

III. Whether petitioner is required to make a 20 percent capital gains modification in arriving at total New York income.

FINDINGS OF FACT

1. In 1973 petitioner, Rudolph Hirsch, and his wife, Libby Hirsch, residents of the State of New York, filed a New York State Combined Income Tax Return (Form IT-208) for the taxable year 1973 wherein petitioner Rudolph Hirsch listed the sum of \$835.15 as income from his insurance business (to

March 31, 1973), a capital gain of \$17,747.67 from the sale of capital assets (including the sale of goodwill from his insurance business for the sum of \$54,105.00). His total income from all sources amounted to \$27,823.07.

2. With his said 1973 return petitioner paid the sum of \$1,754.20 which amount represented his personal income tax as computed by him.

3. On April 11, 1977 a Statement of Audit Changes was issued to petitioner asserting additional personal income tax due for the year 1973 in the sum of \$1,539.00 and unincorporated business tax due in the sum of \$2,678.00, for a total tax due in the sum of \$4,217.00, plus penalty in the sum of \$1,084.59 and interest in the sum of \$945.32, for a total due in the aggregate sum of \$6,246.91.

4. Also, on April 11, 1977 a Notice of Deficiency was issued against petitioner, Rudolph Hirsch, for the year 1973, asserting personal income and unincorporated business tax found to be due in the aforesaid sum of \$4,217.00 plus penalty in the sum of \$1,084.59 and interest in the sum of \$945.32 for a total due in the sum of \$6,246.91.

5. The Statement of Audit changes explained the deficiency as follows:

"Your business activities as an insurance broker constitutes (sic) the carrying on of an unincorporated business. Such income is subject to tax imposed under Article 23 of the Tax Law. Capital gains for unincorporated business tax purposes are taxed at 100%.

Penalty is computed under Section 685(a)(1) & (a)(2) for failure to file a timely return and pay the tax on time. Penalty is computed under Section 685(a)(1) at the rate of 5% per month not to exceed 25%. Penalty is computed under Section 685(a)(2) at the rate of $\frac{1}{2}\%$ per month. Penalty for the first five months cannot exceed 25%.

UNINCORPORATED BUSINESS TAX:

Business income reported	\$ 835.00
Sale of business - goodwill	54,105.00
Total business income	<u>\$54,940.00</u>
Less: allowance for taxpayer services	5,000.00
Balance	<u>\$49,940.00</u>
Exemption (\$416.67 X 3)	<u>1,250.00</u>

Taxable income	\$48,690.00
UNINCORPORATED BUSINESS TAX @ 5½%	\$ 2,678.00

The portion of the long term capital gains not subject to New York personal income tax is an item of tax preference and subject to New York minimum income tax. Computation of New York items of tax preference is as follows:

Capital gains deduction	\$17,748.00
20% modificiation	<u>3,550.00</u>
New York items of tax preference	\$14,198.00

Net long term capital gains are taxed by New York at 60% rather than 50%. Accordingly, 20% of the capital gains deduction should be added to income. Total New York income is recomputed as follows:

Total New York income reported	\$25,803.00
20% of capital gain deduction	<u>3,550.00</u>
Total New York income corrected	\$29,353.00

As separate New York income tax returns were filed, it is necessary to file separate Forms IT-220 for reporting minimum income tax. The maximum specific deduction allowable when filing separate returns is \$2,500.00 for each spouse.

To arrive at New York itemized deductions, Section 615(c)(4) of the State Tax Law requires that a modification must be made for allocable expenses attributable to items of tax preference in excess of the specific deduction. The modification is computed in the following manner:

MODIFICATION FOR ALLOCABLE EXPENSES

Interest	\$ 897.00
Taxes (Less: New York subtraction)	604.00
Charitable contributions	<u>125.00</u>
total allocable expenses	\$1,626.00(A)

New York Adjusted gross income	\$32,208.00(B)
Total items of tax preference	<u>\$14,198.00</u>
Total	\$46,406.00
Less: Specific deduction	<u>2,500.00</u>
Balance	\$43,906.00(C)
Less: $\frac{\$32,208.00(B)}{\$43,906.00(C)} \times \$1,626.00(A) =$	<u>\$1,193.00</u>

Modification for allocable expenses	\$433.00(D)
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COMPUTATION OF PERSONAL INCOME TAX

Total New York income		\$32,208.00
Itemized Deductions:		
Line 6c, Page 1 - 50% X \$3,403.00	\$1,702.00	
Less: Modification	<u>433.00</u>	<u>1,269.00</u>
Balance		\$30,939.00
Exemptions		<u>1,300.00</u>
New York taxable income		\$29,639.00
 New York State Personal Income Tax		 \$ 2,756.00"

Note: The amount shown above for total New York income (\$32,208.00) erroneously includes the income reported by petitioner's wife (\$2,855.00) on her separate income tax return.

6. The petitioner has submitted no evidence to controvert the computation and the personal income tax and unincorporated business tax asserted to be due as set forth in the Statement of Audit Changes aforesaid.

CONCLUSIONS OF LAW

A. That income derived by petitioner Rudolph Hirsch from his insurance brokerage business, including the gain from sale of goodwill, is subject to the imposition of unincorporated business tax pursuant to Section 701 of the Tax Law.

B. That petitioner is required to pay a minimum income tax on one-half of the amount by which net long-term capital gains exceed net short-term capital losses less 20 percent of the amount so deducted (sections 601-A and 622(b)(4) of the Tax Law).

C. That petitioner is required to increase total New York income by 20 percent of the excess of his net long-term capital gains over his net short-term capital losses (section 612(b)(11) of the Tax Law).

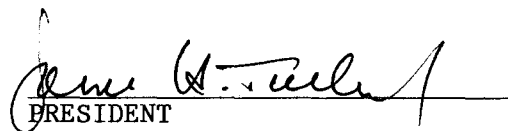
D. That the Audit Division is hereby directed to recompute the personal income tax and minimum income tax due as a result of the error pointed out in Finding of Fact "5" supra; and that, except as so granted, the petition is

denied and the Notice of Deficiency is sustained, together with any additional interest and penalties as may be lawfully due.

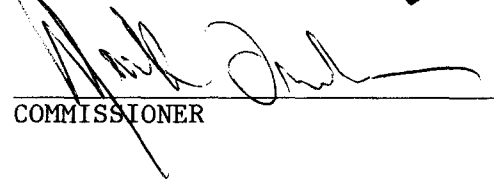
DATED: Albany, New York

JUN 11 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER