

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Harry and Evelyn Wasserman :
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 1970. :

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 22nd day of October, 1982, he served the within notice of Decision by certified mail upon Harry and Evelyn Wasserman, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harry and Evelyn Wasserman
27 Highview Terrace
Yonkers, NY 10705

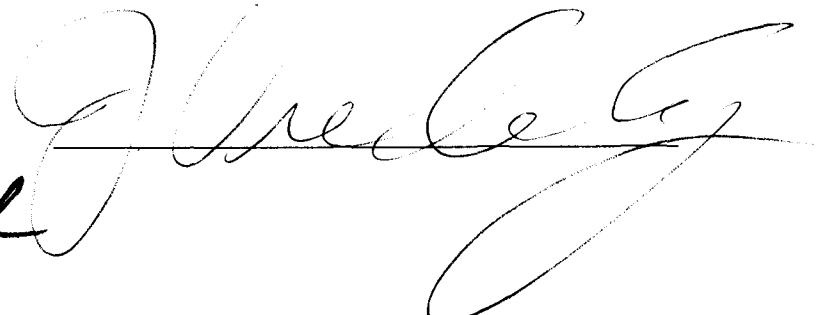
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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
22nd day of October, 1982.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

October 22, 1982

Harry and Evelyn Wasserman
27 Highview Terrace
Yonkers, NY 10705

Dear Mr. & Mrs. Wasserman:

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	:	
HARRY WASSERMAN and EVELYN WASSERMAN	:	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 Year 1970.	:	

Petitioners, Harry Wasserman and Evelyn Wasserman, 27 Highview Terrace, Yonkers, New York 10705, 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 year 1970 (File No. 23027).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 22, 1981 at 9:00 A.M. Petitioner Harry Wasserman appeared pro se and for his wife Evelyn Wasserman. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether the Federal audit and the decision stipulated by the U.S. Tax Court had been dismissed.

II. Whether petitioners were liable for unincorporated business taxes on income derived as fees and commissions for managing real property (multiple dwellings with rental income) which properties were owned by various corporations, which said petitioners were the sole stockholders.

FINDINGS OF FACT

1. Petitioners, Harry Wasserman and Evelyn Wasserman, timely filed New York State Combined Income Tax Return for 1970, on which was reported business income from real estate. They did not file an unincorporated business tax return for said year.

2. On August 5, 1977, the Audit Division issued a Statement of Audit Changes against petitioner Harry Wasserman for 1970 for additional personal income tax and held that his activities constituted the carrying on of an unincorporated business; thus, the income derived therefrom was subject to unincorporated business tax. The Statement of Audit Changes was based on the results of an audit by the Internal Revenue Service and a decision stipulated by the U.S. Tax Court which subsequently followed. Accordingly, the Audit Division issued a Notice of Deficiency against petitioner Harry Wasserman on May 22, 1978 for 1970 in the amount of \$433.52 plus interest.

3. At the hearing, petitioner Harry Wasserman contended that the Internal Revenue Service was returning the monies paid as a result of the 1970 Federal audit. The petitioner presented some documentary evidence, however the evidence was not conclusive. The petitioner was granted an extension of time in which to submit documentary evidence with respect to cancellation of the 1970 Federal audit; however, no other documentary evidence was submitted.

4. Petitioners, Harry Wasserman and Evelyn Wasserman, owned 100 percent of the stock of various corporations which owned real estate. Each corporation owned one or more multiple dwellings which produced income.

5. Petitioners managed these real estate holdings and collected the rents, paid the expenses, and maintained the dwellings, for which they were paid fees by the corporations. They managed these properties through a management

company totally owned and controlled by petitioners, namely Sherylee Management Company. Sherylee Management Company managed only properties wholly owned by corporations of which the petitioners were the sole shareholders.

6. The petition filed asserts that of the total income earned as management fees, \$4,644.39 should be excluded from the computation of unincorporated business tax on the grounds that such amount represented net profits payable to the petitioners as "owners."

This argument was not furthered at the hearing held herein and accordingly demands no further credence.

7. Although petitioner Harry Wasserman testified that management services were rendered on behalf of the management company by both himself and petitioner Evelyn Wasserman, the net income derived from the management company was reported on the tax return filed as income earned by petitioner Harry Wasserman. Also, such income was considered as being earned entirely by petitioner Harry Wasserman for social security purposes.

CONCLUSIONS OF LAW

A. That petitioners, Harry Wasserman and Evelyn Wasserman, have failed to sustain the burden of proof imposed by section 689(e) of the Tax Law to show that the adjustments made to petitioners' Federal taxable income by the Internal Revenue Service for 1970 were cancelled. Therefore, said adjustments are includable in petitioners' New York taxable income for said year, in accordance with section 611 of the Tax Law. It is noted that the U.S. Tax Court decision constituted a final Federal determination for 1970 under 20 NYCRR 153.5 and that said determination was required to be reported to the State Tax Commission pursuant to section 659 of the Tax Law and 20 NYCRR 153.1.

B. That petitioners performed services as managers of the real property which was not owned by them, but rather was owned by corporations, for which they acted as "agents"; thus, petitioners are not within the purview of section 703(e) of the Tax Law.

C. That the income derived by petitioner Harry Wasserman from the management activities constituted receipt from his regular business as a real estate manager; thus, said income is subject to unincorporated business tax for said year at issue.

D. That the petition of Harry Wasserman and Evelyn Wasserman is denied and the Notice of Deficiency issued May 22, 1978 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 22 1982

STATE TAX COMMISSION

ACTING

PRESIDENT

COMMISSIONER

COMMISSIONER