

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Sidney Cohen : 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 1973 & 1974. :

State of New York
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 30th day of September, 1983, she served the within notice of Decision by certified mail upon Sidney Cohen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

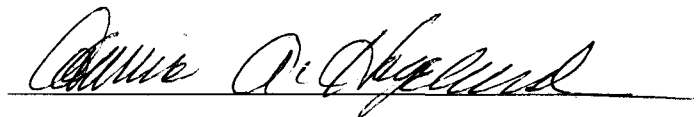
Sidney Cohen
137 Audrey Drive
Long Beach, NY 11561

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
30th day of September, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Sidney Cohen :

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 1973 & 1974.

State of New York
County of Albany


Connie Hagelund, being duly sworn, deposes and says that she is an employee of the State Tax Commission, over 18 years of age, and that on the 30th day of September, 1983, she served the within notice of Decision by certified mail upon Sam Golin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Sam Golin
2940 Ocean Pkwy.
Brooklyn, NY 11235

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
30th day of September, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

September 30, 1983

Sidney Cohen
137 Audrey Drive
Long Beach, NY 11561

Dear Mr. Cohen:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Sam Golin
2940 Ocean Pkwy.
Brooklyn, NY 11235
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
SIDNEY COHEN
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 1973 and 1974.

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DECISION

Petitioner, Sidney Cohen, 137 Audrey Drive, Long Beach, New York 11561, 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 1973 and 1974 (File No. 28752).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 8, 1983 at 10:45 A.M., with all briefs to be submitted by March 8, 1983. Petitioner appeared with Sam Golin, C.P.A. The Audit Division appeared by Paul B. Coburn, Esq. (Irving Atkins, Esq., of counsel).

ISSUES

I. Whether the income derived from petitioner's real estate brokerage business is subject to the imposition of unincorporated business tax.

II. Whether the penalties imposed pursuant to sections 685(a)(1), 685(a)(2), 685(b) and 685(c) of the Tax Law were proper.

FINDINGS OF FACT

1. Sidney Cohen (hereinafter petitioner) timely filed a New York State Income Tax Resident Return for each of the years 1973 and 1974 whereon he listed his occupation as a licensed real estate broker for 1973 and as a broker

for 1974. On petitioner's 1973 return, the actual amount reported on Schedule A as business income was \$16,814.35, which was comprised of real estate brokerage income of \$17,150.00 and a rental loss of \$335.65. On his 1974 return, his real estate brokerage income of \$14,068.00 was combined with a rental loss of \$10,738.00 and the net amount of \$3,330.00 was erroneously reported as wages. Petitioner did not file an unincorporated business tax return for either year at issue herein.

2. On January 23, 1979, the Audit Division issued a Statement of Audit Changes to petitioner wherein the income derived from his real estate brokerage business was held subject to unincorporated business tax. Additionally, Federal audit adjustments of \$8,083.00 (1973) and \$19,726.00 (1974) were incorporated into the recomputations for both personal income tax and unincorporated business tax purposes. Penalties were asserted pursuant to Tax Law sections 685(a)(1), 685(a)(2), 685(b) and 685(c) for failure to file unincorporated business tax returns, failure to pay the taxes determined to be due, negligence and failure to file declarations of estimated unincorporated business tax, respectively. Accordingly, a Notice of Deficiency was issued against petitioner on April 5, 1979 asserting unincorporated business tax of \$2,146.49, personal income tax of \$1,019.41, plus penalties and interest of \$2,391.59, for a total due of \$5,557.49.

3. Petitioner conceded the additional tax due for personal income tax purposes of \$1,019.41.

4. During the years at issue, petitioner operated a real estate brokerage business located at 9 7th Avenue, Brooklyn, New York. His business gross income, as reported on his Federal Schedules C, of \$32,286.00 (1973) and

\$23,980.00 (1974) was, pursuant to a schedule submitted by him, comprised of the following:

	<u>1973</u>	<u>1974</u>
Interest income derived from two 2nd mortgages in 1973 and three in 1974	\$ 2,410.00	\$ 5,363.00
Brokerage commissions from the sale of four houses in 1973 and five houses in 1974	3,090.00	6,120.00
Profits from the sale of four houses in 1973 and one house in 1974. These houses were purchased and subsequently sold by petitioner	21,153.00	6,000.00
Commissions on apartment rentals	3,438.00	3,095.00
Income tax return preparation fees	1,195.00	3,402.00
Total business gross income	<u>\$31,286.00</u>	<u>\$23,980.00</u>

Petitioner could not explain the \$1,000.00 difference between the gross income reported on his Schedule C for 1973 of \$32,286.00 and that as reported on his breakdown of \$31,286.00.

5. Petitioner contended that none of the above-stated income is subject to the unincorporated business tax. When questioned as to why he believed this to be so, he stated that he "never heard of it". No claim was made that said income is exempt under the provisions of the Tax Law.

6. During the hearing petitioner testified that he is "in the business of buying and selling houses".

7. Petitioner alleged that certain adjustments incorporated into the total Federal audit adjustments of \$8,083.00 (1973) and \$19,726.00 (1974) were inapplicable for unincorporated business tax purposes. Although petitioner was given sufficient time to submit details and documentation with respect to such alleged inapplicable adjustments, he failed to do so.

8. Petitioner contended that he is not subject to any of the penalties asserted herein; however, he failed to provide a reasonable basis for the abatement of any of the penalties asserted.

CONCLUSIONS OF LAW

A. That section 701(a) of the Tax Law provides, in pertinent part, that:

"A tax is hereby imposed for each taxable year on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within this state."

B. That section 703(a) of the Tax Law defines an unincorporated business as:

"any trade, business or occupation conducted, engaged in or being liquidated by an individual or unincorporated entity, including a partnership or fiduciary or a corporation in liquidation, but not including any entity subject to tax under article nine, nine-a, nine-b, nine-c, thirty-two or thirty-three of the tax law."

C. That petitioner's activities during the years 1973 and 1974 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law. Accordingly, the income derived therefrom is subject to the imposition of unincorporated business tax pursuant to section 701(a) of the Tax Law.

D. That the penalties asserted pursuant to Tax Law sections 685(a)(1), 685(a)(2), 685(b) and 685(c) are hereby sustained.

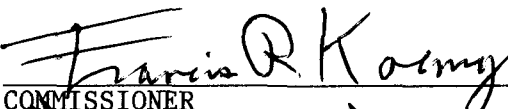
E. That the petition of Sidney Cohen is denied and the Notice of Deficiency dated April 5, 1979 is hereby sustained, together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

SEP 30 1983


PRESIDENT


COMMISSIONER


COMMISSIONER