

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Louis L. Sunshine

:

:

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 & 1975.

State of New York
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Louis L. Sunshine, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Louis L. Sunshine
811 Pike St., Box 124
Etna, OH 43018

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
24th day of January, 1983.

Kathy Pfaffenbach

Connie O'Hagan

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
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for Redetermination of a Deficiency or a Revision :
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& UBT under Article 22 & 23 of the Tax Law for the:
Years 1973, 1974 & 1975.

State of New York
County of Albany

Kathy Pfaffenbach, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of January, 1983, she served the within notice of Decision by certified mail upon Jerome J. Feldman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jerome J. Feldman
249-12 Jericho Tpke.
Bellerose, NY 11426

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
24th day of January, 1983.

Ronnie O. Hagelend

Kathy Pfaffenbach

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 24, 1983

Louis L. Sunshine
811 Pike St., Box 124
Etna, OH 43018

Dear Mr. Sunshine:

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
Jerome J. Feldman
249-12 Jericho Tpke.
Bellerose, NY 11426
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
LOUIS L. SUNSHINE	:	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 1973, 1974 and 1975.	:	

Petitioner, Louis L. Sunshine, 811 Pike Street, Box 124, Etna, Ohio 43018, 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, 1974 and 1975 (File No. 22824).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 24, 1981 at 10:45 A.M. and continued to a conclusion before James Hoefer, Hearing Officer, at the same location on May 21, 1982 at 9:00 A.M. Petitioner Louis L. Sunshine appeared with Jerome Feldman, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether petitioner's activities in 1973 as a management consultant constituted the carrying on of an unincorporated business and, if so, was any unincorporated business taxable income attributable to activities wholly or partly carried on within the State.

II. Whether petitioner was domiciled in New York State and taxable as a resident individual for the years 1973, 1974 and 1975.

FINDINGS OF FACT

1. Petitioner herein, Louis L. Sunshine, timely filed New York State income tax resident returns for the years 1973, 1974 and 1975. On the 1973 return, petitioner reported "other income" of \$62,500.00, said amount representing the business income generated from Mr. Sunshine's activities as a management consultant. No unincorporated business tax return was filed by petitioner for the year 1973.

2. A consent was executed for the year 1973 whereby the statute of limitations for assessment or for refund of personal income tax and unincorporated business tax was extended to April 15, 1978. Said consent was properly validated by the Audit Division on February 9, 1977.

3. On January 28, 1976, the Audit Division issued a Statement of Audit Changes to petitioner for the year 1973, wherein it asserted that "The income from your (petitioner's) activities as a management consultant is subject to the unincorporated business tax". Penalties were also asserted under sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file an unincorporated business tax return on time and failure to pay the unincorporated business tax when due, respectively.

4. In accordance with the aforementioned Statement of Audit Changes, the Audit Division, on April 4, 1978, issued a Notice of Deficiency to petitioner for the year 1973 assessing unincorporated business tax due of \$2,887.50 and penalties and interest of \$1,827.05, for a total due of \$4,714.55. A timely petition was filed on April 21, 1978 for a redetermination of the unincorporated business tax asserted due in the aforementioned Notice of Deficiency.

5. Petitioner, on April 29, 1977, timely filed claims for credit or refund of personal income tax paid for the years 1973, 1974 and 1975 in the amounts of

\$7,398.05, \$6,044.00 and \$4,463.11, respectively. The claims for credit or refund were premised on the assertion that petitioner was not domiciled in or taxable as a resident of New York State. No action was taken by the Audit Division to either accept or deny the claims for refund. Accordingly, petitioner, on October 9, 1981, timely filed a petition for refund of personal income tax paid for the years 1973, 1974 and 1975.

6. In 1963, petitioner, then a resident and domiciliary of New York State, accepted a position in Columbus, Ohio as president and chairman of the board of directors of Omar Bakeries, Inc. From 1963 to 1969 petitioner resided primarily in hotels. In 1969 petitioner married Wanda Boyles and took up residence with her in her house located at 120 Lowell Road, Columbus, Ohio.

7. During the years at issue, petitioner, who was approximately 73 years old in 1973, resided with his wife at 120 Lowell Road, Columbus, Ohio. Petitioner's consulting activities in 1973 were conducted from an office he maintained in the house at 120 Lowell Road and from office space provided by his clients. All of petitioner's clients were located outside of New York State. Petitioner did not maintain an office in New York State from which his consulting activities were conducted.

8. On February 5, 1973, petitioner paid off the outstanding mortgage on the house located at 120 Lowell Road. In addition to paying off the outstanding mortgage in the amount of \$10,038.04, petitioner also paid for all expenses in connection with the maintenance and upkeep of the 120 Lowell Road residence.

9. New York State resident income tax returns were prepared by petitioner's New York accountant wherein petitioner's address was shown as 30 Montrose Avenue, Brooklyn, New York. Petitioner was in the habit of mailing his income tax information to his New York accountant, who would then prepare the New York

State return basically following the previous year's pattern. Mr. Sunshine visited his New York accountant sometime after the returns in question were filed and petitioner's status as a domiciliary and resident of New York State was questioned as the result of said visit.

10. The address shown on the New York State returns, 30 Montrose Avenue, Brooklyn, New York, was an apartment owned by petitioner which he had occupied in prior years with his sister and her family. By written notice dated April 14, 1967, petitioner notified the owner of the apartment complex that:

"I (Louis L. Sunshine) wish to turn over complete ownership to my sister (Beatrice Strauss) without any compensation whatsoever and including my share of stock. Thereby giving her sole ownership of the apartment 12B, Building No. 1, 30 Montrose Avenue, Brooklyn 6, N.Y."

11. During the years in question, petitioner was present in New York State approximately 15 to 20 times a year for the purpose of consulting with his attorney. Petitioner, an efficiency expert, would meet with his attorney on business matters, since his attorney had recommended and procured management consulting jobs for petitioner from various clients of the law firm. While in New York, petitioner stayed with friends or relatives and he occasionally stayed with his sister at 30 Montrose Avenue, Brooklyn, New York.

12. During the years at issue, petitioner was not registered to vote in either Ohio or New York, nor did he have a will. Petitioner maintained his checking account with the Chase Manhattan Bank in New York City. Petitioner did not file income tax returns with the State of Ohio for the years 1973, 1974 and 1975. He first filed an income tax return with Ohio for the year 1976.

13. In 1975 petitioner realized a long-term capital gain of \$1,750.00 from the sale of a vacant lot located in New York State. Other than the aforementioned \$1,750.00, petitioner realized no other income from New York sources during the years 1973, 1974 and 1975.

14. Petitioner's management consulting activities in 1973 were conducted as an independent contractor. Petitioner, as an efficiency expert, would advise his clients on methods they should utilize to increase efficiency and production.

CONCLUSIONS OF LAW

A. That petitioner's activities as a management consultant during the year 1973 constituted the conduct of an unincorporated business; however, said unincorporated business was carried on entirely outside the State of New York. That petitioner maintained only one office from which his management consulting activities were carried on and that office was located in the State of Ohio. Since there is no unincorporated business taxable income attributable to a business wholly or partly carried on in this State, no unincorporated business tax is due for the year 1973.

B. That petitioner was not domiciled in or taxable as a resident of New York State for the years 1973, 1974 and 1975. Petitioner, as a nonresident of New York State, had no income from New York sources during the years 1973 and 1974. For the year 1975, petitioner had total New York income of \$2,100.00 [Tax Law section 632(b)(1)(A)]. Total New York income for 1975 is computed as follows:

Long-term gain on sale of New York property	\$1,750.00
20% capital gain modification	
[Tax Law section 612(b)(11)]	350.00
1975 Total New York Income	<u>\$2,100.00</u>

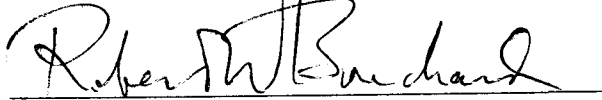
C. That the petition of Louis L. Sunshine for redetermination of the unincorporated business tax deficiency is granted. That the Notice of Deficiency dated April 4, 1978, assessing unincorporated business tax due of \$2,887.50 is cancelled. That the petition of Louis L. Sunshine for refund of personal

income tax is granted in full for the years 1973 and 1974. For the year 1975, the claimed refund is to be reduced by the tax due computed on a nonresident basis on total New York income of \$2,100.00. That the Audit Division is directed to compute the net personal income tax refund due petitioner for the years 1973, 1974 and 1975 in accordance with the conclusions rendered herein and authorize a refund to petitioner for said amount, together with such interest as may be legally due petitioner.

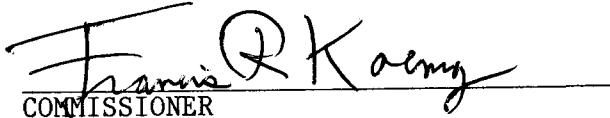
DATED: Albany, New York

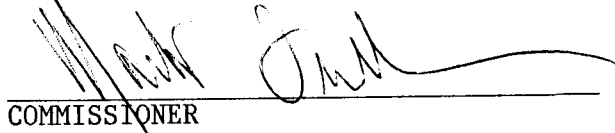
JAN 24 1983

STATE TAX COMMISSION



ACTING PRESIDENT


COMMISSIONER


COMMISSIONER