

MEMORANDUM

Block, Harris

TO: Commissioners Murphy, Palestin & Macduff

FROM: Solomon Sies, Hearing Officer

SUBJECT: HARRIS BLOCK

1960 Assessment #AB-007660 - Article 23

A hearing with reference to the above matter was held before me on October 16, 1964. The appearances and evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The issues involved herein is whether the activities of the taxpayer in real estate management, mortgage refinancing and insurance fees on behalf of various partnerships in which he had a fractional interest constitutes the carrying on of an unincorporated business in accordance with article 23 of the Tax Law.

The taxpayer Harris Block and Frances Block, his wife filed a New York combined Income Tax Return for the year 1960 in which they reported total income in the sum of \$41,379.37; that the sum of \$15,533.20 represented their distributive share of income received from various partnerships; that in addition thereto, the taxpayer Harris Block reported the sum of \$12,658.32 net income from business of "Real Estate Management."

On the Federal Income Tax Return for the year 1960 the taxpayer Harris Block indicated that he was conducting Real Estate Management business under the name of Harris Block Co. at 12 East 41st Street, New York, N.Y.; that receipts from said business amounted to \$29,129.72; that business expenses which included salaries, rent and other business expenses amounted to \$16,471.40 and net profit amounted to \$12,658.32.

The taxpayer did not appear at the hearing but was represented by two accountants, one of whom testified that the taxpayer Harris Block owned a fractional interest in about ten co-partnerships which owned apartment houses; that the taxpayer and his family owned a majority of interest in most of said co-partnerships; that the taxpayer had a verbal agreement with the members of the various partnerships whereby he was to manage the various properties, collect rent, make necessary repairs for which he was to receive a fee or commission of about five per cent of the rents collected; that in addition thereto the taxpayer also received fees for re-financing mortgages on two of the properties owned by two of the co-partnerships and also insurance fees; that in connection with his aforementioned activities the taxpayer maintained an office in his own name. Attached hereto is a schedule of the management fees received by the taxpayer from the various partnerships and his interest therein.

It is to be noted that in addition to the interest that the taxpayer held in the various partnerships, he owned outright in his own name three or four parcels of real estate properties consisting

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of apartment houses, which were located at 34-36 Barrow Street, 355 Sixth Avenue, 23 Washington Square North. He did not manage said properties but entrusted the management of same to others (Minutes of Hearing, page 37 - Taxpayer's Exhibit #3).

Subdivision (e), section 703 of the Tax Law provides that:

"An owner of real property, a lessee or a fiduciary shall not be deemed engaged in an unincorporated business solely by reason of holding, leasing or managing real property."

In the case of Schirrmeister's Estate, 8 A.D. 2d 180, reargument and appeal denied 9 A.D. 2d 601, leave to appeal denied 7 N.Y. 2d 708, it was held that the business activities of two brothers, equal owners of stock of five corporations, having extensive real estate holdings, consisting of the handling of various financial and collection services for such corporations and the distribution to themselves of funds in the nature of compensation, constituted "unincorporated business." The opinion of the Appellate Division, by Bergan J., at page 182, states, in part, as follows:

"The handling of financial or collection services for a group of corporations could certainly be found to be a 'business' in which a service corporation, for example, might be expected to engage; and, of course, the management of real estate as a service would usually be deemed a business."

Although the above case dealt with a corporation which was a distinct entity apart from the individual stockholders thereof, I am of the opinion that the opinion of the Court in the Schirrmeister case is applicable to the instant matter in which a series of partnerships are involved.

The various partners did not, in directing the taxpayer to manage the real property, bear apportion among themselves the expenses necessary for such management. They deducted as business expenses management fees which were paid to the taxpayer who maintained an office in his own name and bore all of the office expenses including rent and salaries.

I am of the opinion, therefore, that the above described activities of the taxpayer constituted the carrying on of an unincorporated business within the intent and meaning of subdivision (e),

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section 703, Article 23 of the Tax Law.

For the reasons stated above, I recommend that the determination of the Tax Commission in this matter be substantially in the form submitted herewith.

JAN 25 1966

SOLOMON SIES

Hearing Officer

/s/ M. SCHAPIRO

Approved

/s/ S. HECKELMAN

Approved.

SS/ts

(June 28, 1966)

SCHEDULE OF MANAGEMENT FEES RECEIVED AND THE INTEREST IN PARTNERSHIP

<u>FEES RECEIVED FROM</u>	<u>AMOUNT</u>	<u>INTEREST OF TAXPAYER</u>		<u>INTEREST OF BLOCK FAMILY INCLUDING TAXPAYER</u>
Broadlawn	\$6820.04	20	%	71.75 %
136 W.4th Street	1615.84	8.56		78.57
Lawron	3020.69	31.21		72.61
Tri Group	1865.31	none		75.01
Bushlock	1298.17	none		84.13
Siram	none	none		100
Kingals	none	30		31.76
Harris Block & Fisher	none	25		50
Riverwood	2966.05	9.23		9.20
Fisher Court	1973.03	25		25.
17 Gramercy Park	<u>778.63</u>	none		none
<u>TOTAL MANAGEMENT FEES</u>	<u>\$20337.76</u>			
Mortgage Refinancing fees				
On Broadlawn	3125.00			
On Lawron	1075.00			
Insurance Fees on above properties	<u>4591.96</u>			
<u>TOTAL FEES RECEIVED BY</u>				
HARRIS BLOCK	<u>\$29129.72</u>			

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION

OF

HARRIS BLOCK

FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 23 OF THE
TAX LAW FOR THE YEAR 1960

Harris Block, the taxpayer herein, having filed an application for revision or refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1960 and a hearing having been held in connection therewith at the office of the State Tax Commission, 80 Centre Street, New York, N.Y. on the 16th day of October, 1964, before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Victor Rada and David Angus, Certified Public Accountants, testimony having been taken and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That Harris Block and Frances Block, his wife, filed a New York State combined income tax return for the year 1960 in which they reported income from various partnerships, income from dividends and from interest; that in addition hereto on Schedule C on said return the taxpayer Harris Block reported profit from business of Real Estate Management in the sum of \$12,658.32; that the taxpayer Harris Block did not file any unincorporated business tax return for said year; that on April 26, 1962, the Department of Taxation and Finance made an additional assessment of unincorporated business tax against the taxpayer Harris Block for the year 1960 (Assessment #AB-007660) on the grounds that the income received from Real Estate Management activities is subject to unincorporated business tax and accordingly computed unincorporated business tax plus penalty and interest in the sum of \$228.65.

(2) That during the year 1960 and prior thereto the taxpayer Harris Block owned a fractional interest in about ten (10) co-partnerships which owned apartment houses located in the City of New York and Westchester County; that in addition thereto, the taxpayer Harris Block was also the sole owner of certain other apartment houses located in the City of New York whose management he entrusted to others and paid fees for such management services; that the taxpayer Harris Block entered into an oral agreement with the other co-partners of eight (8) of the above mentioned co-partnerships whereby it was agreed that the taxpayer Harris Block was to manage the aforesaid properties for which he was to receive certain management fees in connection therewith.

(3) That in connection with his management activities on behalf of the various partnerships, the taxpayer Harris Block maintained an office located at 12 East 41st Street, New York City, N.Y.; that in connection with such activities the taxpayer Harris Block collected the rents, arranged for repairs and improvements in connection with the properties owned by the various partnerships; that in 1960 the taxpayer Harris Block received management fees from eight (8) of the co-partnerships amounting to \$20,337.76; that in addition thereto the taxpayer also received mortgage refinancing fees amounting to \$4200.00 from two of the aforementioned partnerships and insurance fees in addition to the management fees amounting to \$4,591.96 so that the total gross income received by the taxpayer from the various partnerships in which he held a fractional interest during the year 1960 amounted to \$29,129.72; that the taxpayer in connection with his aforementioned management activities deducted office and business expenses as follows:

Salaries and wages	\$ 5,698.00
Rent on business properties	2,370.00
Tax on business and business properties	316.08
Depreciation (Vacuum Cleaner & Air Conditioner)	62.24
Electricity	278.17
Telephone	898.91
Postage	401.00
Water	97.60
Bus and Subscriptions	278.00
Legal and Accounting fees	412.00
Insurance	59.15
Entertainment	2,096.99
Automobile rental and Taxifares	

Christmas Expense
Advertising and Promotion
Travel Expense
Miscellaneous Expense

\$ 807.71
691.85
1,021.53
497.64

\$16,471.40 ;

that the net profit of the taxpayer from such activities during the year 1960 amounted to \$12,652.32.

(4) That the taxpayer Harris Block did not receive any management fees during the year 1960 from three (3) of the real estate co-partnerships in which he held fractional interests; that the properties wholly owned by him were managed by others; that the management fees received by the taxpayer Harris Block from the various co-partnerships as indicated above were deducted as expenses of said co-partnerships; that members of the taxpayer's family also owned fractional interests in ten (10) real estate partnerships; that the taxpayer Harris Block owned no interest in two (2) of the real estate co-partnerships for whom he managed said properties and for which he received management fees or commissions (Minutes of Hearing, pages 29 and 31).

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby

DETERMINE:

(A) That the real estate management, mortgage refinancing and insurance activities of the taxpayer during the year 1960 constituted the carrying on of an unincorporated business in accordance with subdivision (e), section 703, Article 23 of the Tax Law.

(B) That the additional assessment of unincorporated business taxes made against the taxpayer Harris Block for the year 1960 (Assessment #AE-007663) is correct; that the same does not include any tax or other charge which could not have been lawfully demanded and that the application for revision or refund filed with respect thereto be and the same is hereby denied.

DATED: Albany, New York, on the 8th day of July, 1966.

STATE TAX COMMISSION

/s/

JOSEPH H. MURPHY

President

/s/

IRA J. PALESTIN

Commissioner

/s/

JAMES R. MACDUFF

Commissioner