

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATION
OF
KELSEY VOLNER & VERA VOLNER
FOR REVISION OR REFUND OF UNINCORPORATED
BUSINESS TAXES UNDER ARTICLE 16-A OF THE
TAX LAW FOR THE YEAR 1956

The taxpayer herein having filed an application for revision or refund of unincorporated business taxes under Article 16-A of the Tax Law for the year 1956 and a hearing having been held in connection therewith at the office of the State Tax Commission at 80 Centre Street, New York, N. Y., on the 12th day of December 1963 before Solomon Sies, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer appeared and was represented by Seymour G. Saslow, C.P.A., and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That a personal income tax return under Article 18 of the Tax Law signed by both Kelsey Volner and Vera Volner, his wife, was filed for the year 1956; that there was reported on the salary income from various sources including income from Nassau Management Co., Inc., net loss from various partnerships and, as other income, miscellaneous commissions in the sum of \$9,422.13; that on October 19, 1959 an assessment of unincorporated business taxes for the year 1956 was issued (Assessment No. B-678727) against both Kelsey Volner and Vera Volner, his wife, on the ground that the miscellaneous commission income received by

Kelsey Volner was derived from an unincorporated business and subject to unincorporated business taxes in accordance with Article 16-A of the Tax Law; that the sole income from all sources was earned by Kelsey Volner; that Vera Volner was a housewife and had no independent income during the year 1956.

(2) That the taxpayer's income was primarily derived from partnerships and corporations engaged in real estate development or management; that the taxpayer had a 1/3 interest in one of the corporations, Nassau Management Co., Inc., from which the taxpayer received more than 1/2 of his income; that the taxpayer was also an officer of said corporation; that the other principals of said corporation were Abraham Korman and Milton Saslow who each also had a 1/3 stock interest in said corporation; that said corporation was engaged in the purchase and sale of real estate, operating, managing, developing and syndicating real estate deals; that the taxpayer was responsible on behalf of said corporation to promote business; that the corporation was licensed to sell real property; that the taxpayer was not a real estate broker during the year 1956 or thereafter.

(3) That the taxpayer testified to the effect that he and the two other stockholders received similar commissions in the same amounts from the same principals during the year 1956; that the taxpayer knew of no reason why such commissions did not go to the corporation instead of the individuals, but that the probable reason was that the commissions were received for activities which were not a regular part of the business of the corporation; that the commissions were paid by contractors who were known to the taxpayer and the other stockholders because

of the very nature of their work and that the taxpayer and the other stockholders would recommend them or refer work to them.

(4) That the miscellaneous commission income received by the taxpayer was not earned either as an employee or an officer of the aforesaid corporation; that such commission income was derived from the taxpayer's own independent activities in the field of real estate development; that the taxpayer failed to submit any evidence which would warrant a finding that the taxpayer's activities with regard to the commission income did not constitute that of an unincorporated business and that any testimony offered by the taxpayer with regard to the same was vague and inadequate.

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

(A) That the assessment for the year 1956 erroneously included the name of the taxpayer's wife, Vera Volner; that, accordingly, said assessment is hereby modified and corrected so as to delete therefrom the name of "Vera Volner, his wife."

(B) That the sum of \$9,422.22 was income derived from an unincorporated business conducted by the taxpayer, and therefore, constituted receipts of an unincorporated business subject to tax in accordance with Article 16-A of the Tax Law.

(C) That, accordingly, the assessment for the year 1956 (Assessment No. B-578727) is correct, except as indicated in Determination (A) above; that said assessment includes no tax or other charge which could not have been lawfully demanded

and that the taxpayer's application for revision or refund with respect to the aforementioned assessment be and the same is hereby denied.


DATED: Albany, New York on the 12th day of March , 1965.

STATE TAX COMMISSION

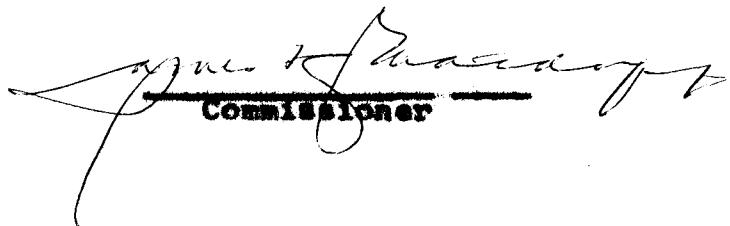
/s/

JOSEPH H. MURPHY

President



Commissioner



Commissioner