

Commissioners Murphy, MacDuff and Conlen

Solomon Sies, Hearing Officer

ROBERT S. BREITBART

**PETITION FOR REDETERMINATION OF A DEFICIENCY  
OF UNINCORPORATED BUSINESS TAXES UNDER  
ARTICLE 23 OF THE TAX LAW FOR THE YEAR 1962**

A hearing with reference to the above matter was held before me at 80 Centre Street, New York City on December 23, 1963. The appearances and evidence produced were as shown in the stenographic minutes and the exhibits submitted herewith.

The issue involved herein is whether the activities of the taxpayer in connection with real estate management on behalf of three partnerships in which he had a fractional interest and his activities as a licensed insurance broker constitute the carrying on of an unincorporated business subject to unincorporated business tax in accordance with the provisions of Subdivision (c), Section 703, Article 23 of the tax law.

On Schedule "C" of his Federal income tax return for the year 1962, the taxpayer, Robert S. Breitbart, reported gross income in the sum of \$22,677.88 from insurance and real estate. He reported business deductions in the sum of \$8,953.47 which consisted of depreciation, rent, stationery and printing, wages, etc. He reported net income from said business for the year 1962 in the sum of \$13,724.41.

During the year 1962 and prior thereto, the taxpayer, Robert S. Breitbart was and still is an attorney and licensed insurance broker, maintaining an office at 233 Broadway, New York City. He also owns a fractional interest in four partnerships which own real property consisting of apartment houses and is an officer and stockholder of Wickesedge Realty Corp., a domestic corporation engaged in the rental of real estate and maintaining an office at 233 Broadway, New York City. In 1962 the taxpayer, Robert S. Breitbart, received legal fees in the sum of \$1,493.02; management fees from the four real estate partnerships mentioned above in the sum of \$7,179.73; management fees from Wickesedge Realty Corp. in the sum of \$1,325.85 and net income from his insurance business in the sum of \$12,679.28. The taxpayer did not file any unincorporated business tax returns for the year 1962. The Income Tax Bureau issued a notice of deficiency holding the net income received by the taxpayer from real estate management and insurance in the sum of \$12,231.39 (but excluding the legal fees) subject to unincorporated business tax.

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In the case of Schirrmaster's Estate, 8 A.D. 24 180, reargument and appeal denied 9 A.D. 24 601, leave to appeal denied 7 N.Y. 24 708, 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 of 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."

It is to be noted that the partnerships and the corporation in their returns, listed the management fees received by the taxpayer as expense deductions. His activities on behalf of said partnerships and the corporation in connection with his management of the properties held by them consisted of collecting rents, making necessary repairs and paying bills. He maintained an office in connection with said activities and deducted expenses in the operation of said office.

Although the taxpayer contends that he is exempt from unincorporated business tax since he owns a fractional interest in the various partnerships which are engaged in the holding of rental property for their own account, I am of the opinion that the situation is no different than if the taxpayer had rendered such personal services to various corporations. It is to be noted that the taxpayer reported a distributive share of income from one of the partnerships; that the others sustained losses and that taxpayer deducted his share of such losses. The instant case is to be distinguished from the case of Arnold S. and Miriam Cohen, formal hearing determination dated September 27, 1966 (subsequently remanded). The income there was treated as salary and the taxpayer's relationship with his principals was that of employer-employee for payroll purposes since they deducted withholding taxes and paid social security on his behalf. In the instant case, however, the taxpayer was not an employee but rather an independent agent and maintained an office deducting expenses in the operation of same. The facts in the instant case are more akin to those in Schirrmaster's Estate, supra.

In Matter of Harris Block (Formal Hearing Determination 4, July 21, 1966) it was held that the activities of the taxpayer in real estate management on behalf of various partnerships in which he owned fractional interests constituted the carrying on of an unincorporated business.

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I am of the opinion, therefore, that the activities of the taxpayer, Robert S. Breitbart, in connection with his insurance business and real estate management constituted the carrying on of an unincorporated business within the intent and meaning of Subdivision (g), Section 703, Article 23 of the Tax Law.

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

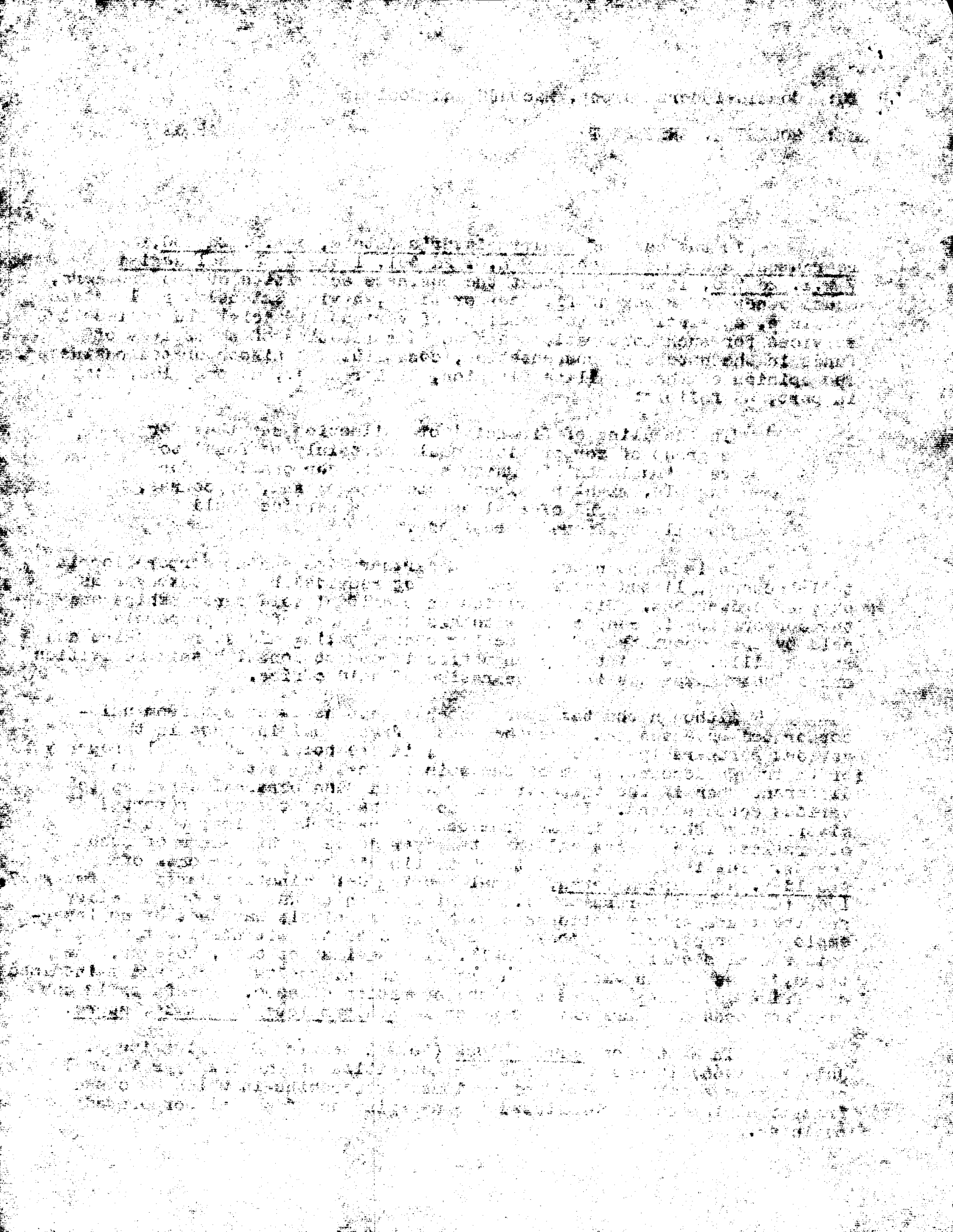
**FEB 20 1967**

**SOLOMON SIES**  
**Hearing Officer**

/s/ **MARTIN SCHAPIRO**  
**Approved**

/s/ **SAUL HECKELMAN**  
**Approved**

**SS:HM 3-27-67**



**STATE OF NEW YORK  
STATE TAX COMMISSION**

**-----  
IN THE MATTER OF THE PETITION  
OF**

**ROBERT S. BREITBART**

**File 62-3300300**

**FOR A REDETERMINATION OF A DEFICIENCY OR  
FOR REFUND OF UNINCORPORATED BUSINESS  
TAX UNDER ARTICLE 23 OF THE TAX LAW FOR  
THE YEAR 1962**  
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The taxpayer herein having filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1962 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 21st day of December, 1965 before Solomon Sico, Hearing Officer of the Department of Taxation and Finance, at which hearing the taxpayer was represented by Herbert Garfinkel, Certified Public Accountant, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That Robert S. Breitbart and Ellen Breitbart, his wife, filed a joint New York State Income Tax return for the year 1962 in which the taxpayer Robert S. Breitbart reported total wages received from Pace College in the sum of \$7,447.89; that, in addition, the taxpayer Robert S. Breitbart reported net income on Schedule "A", business income received in connection with the business of insurance and real estate management in the sum of \$13,724.41; that the aforementioned taxpayer did not file any unincorporated business tax return for the year 1962; that on May 10, 1965 the Department of Taxation and Finance issued a statement of audit charges against the taxpayer, Robert S. Breitbart, imposing unincorporated business tax on the net income of the taxpayer from real estate management and insurance upon the ground that the activities of the aforementioned taxpayer in insurance and real estate management constituted the carrying on of an unincorporated business and accordingly issued a notice of deficiency including tax, penalty and interest in the sum of \$197.41; that the income of the taxpayer from the practice of law was excluded

from the computation for unincorporated business tax purposes.

(2) That during the year 1962 and prior thereto, the taxpayer Robert S. Breitbart was and still is an attorney-at-law admitted to practice law in the State of New York and maintained an office in connection with said practice at 233 Broadway, New York City; that the taxpayer's income from the practice of law during the year 1962 amounted to \$1,493.02.

(3) That during the year 1962 and prior thereto the taxpayer was and still is an insurance broker licensed as such by the Insurance Department of the State of New York and conducted his insurance business under the name of Preferred Insurance Company at the same address where he conducts his law practice; that during the year 1962, his income from the aforementioned insurance business amounted to \$12,679.28.

(4) That, in addition, the taxpayer owns a fractional interest in four partnerships which own real property consisting of apartment and tenement houses, and are engaged in the rental thereof and is an officer and shareholder of Wickhedge Realty Corp., a domestic corporation organized under the laws of the State of New York engaged in the rental of real estate; that the partnerships and the corporation maintain offices in the same office where the taxpayer is engaged in his law practice and insurance business; that during the year 1962, the taxpayer received management fees from said partnerships as follows: Alton Realty Co., \$888.00; Placefield Realty Co., \$1,942.18; North River Realty Co., \$3,487.21 and B L B-178 Co., \$949.34; that during the year 1962 the taxpayer received from Wickhedge Realty Corp. management fees in the amount of \$1,325.85; that the total management fees received by the taxpayer during said year amounted to \$8,292.58; that the activities of the taxpayer on behalf of the partnership and the corporation consisted of the management of the properties owned by the aforesaid entities, collecting rents, arranging for necessary repairs and paying bills; that neither the partnerships nor the corporation deducted Federal and State withholding taxes or paid social security or unemployment insurance on

behalf of the taxpayer.

(3) That in Schedule C of his Federal income tax return for the year 1962, the taxpayer reported deductions in the amount of \$8,953.47 which consisted of rent, wages, depreciation, stationary and printing, etc.

(4) That the taxpayer reported on his income tax return for the year 1962, a distributive share of income from one of the partnerships for whom he had rendered real estate management services and received fees therefor; that the other partnerships from whom the taxpayer received real estate management fees sustained losses and the taxpayer deducted on his return his proportionate share of such losses.

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

**DECIDES:**

(A) That the activities of the taxpayer during the year 1962 as an insurance broker constituted the carrying on of an unincorporated business solely within the State of New York and the income therefrom was subject to unincorporated business tax in accordance with the provisions of Section 703, Article 23 of the Tax Law.

(B) That the activities of the taxpayer during the year 1962 with respect to real estate management, as more fully set forth in Finding (4) above, constituted the carrying on of an unincorporated business and the income therefrom was subject to unincorporated business tax within the intent and meaning of Section 703, Article 23 of the Tax Law.

(C) That accordingly, the Statement of Audit Changes and Notice of Deficiency are correct; that the same do not include any tax or other charge which could not have been lawfully demanded, and that the petition of the taxpayer for redetermination of said deficiency

for the year 1962 he and the same is hereby denied.

DATED: Albany, New York, on the 12th day of April 1967.

**STATE TAX COMMISSION**

/s/

JOSEPH H. MURPHY

**President**

**Commissioner**

/s/

WALTER MACLYN CONLON

**Commissioner**

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