

STATE OF NEW YORK  
STATE TAX COMMISSION

*Stein Jack*  
*U.B.T.*

*deposited*  
*CH*  
*49-346*  
*1970*

In the Matter of the Petition

of

Jack Stein

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business:  
Taxes under Article(s) 23 of the  
Tax Law for the (Year(s) 1960 & 1961 :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Claire A. Draves , 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 30th day of November , 1970 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Jack Stein

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Jack Stein  
525 East 86th Street  
New York, New York 10028

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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 November , 1970

*Paul Wright*

*Claire A. Draves*

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JACK STEIN	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the years 1960 and 1961	:	

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Petitioner, Jack Stein has filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1960 and 1961, (file number 1-4952605). A formal hearing was held before Francis X. Boylan, Hearing Officer on December 10, 1969 at 80 Centre Street, New York, New York at 3:00 P.M. The petitioners appeared by Lazarus Meyers. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of counsel).

Petitioner and his wife filed a New York State personal income tax resident return for the year 1961. Petitioner reported on Schedule "A" a net profit from business of "real estate brokerage". Petitioner did not file any unincorporated business tax returns for the years 1960 and 1961 upon the ground that his activities as a real estate consultant constituted the practice of a profession exempt from unincorporated business tax.

On April 11, 1966 the Income Tax Bureau issued a statement of audit changes against petitioner imposing unincorporated business tax upon the income derived by the petitioner as a real estate broker upon the ground that such business activities constituted the carrying on of an unincorporated business and issued a notice of deficiency for the years 1960 and 1961 in the sum of \$3168.33.

Petitioner was not a high school graduate. He was licensed as a real estate broker. He reported his occupation on his 1961 New York State income tax return and on his 1960 and 1961 U. S. Individual Tax Return as that of "real estate broker".

Petitioner deducted business expenses in connection with his activities, including deductions in 1961 for "business promotion and entertainment of real estate purchases, attorneys and prospective clients - ordinary and necessary to consummate deals." On his 1961 state and federal income tax return he listed his income as "commissions less co-brokers commissions". As part of his activities as a real estate broker, petitioner consulted with his clients on real estate matters.

#### CONCLUSIONS OF LAW

A. That during the years 1961 and 1962 the activities of petitioner, Jack Stein, as a real estate broker and real estate consultant, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of unincorporated business tax in accordance with Section 703(c) of the Tax Law; that such activities during the aforementioned years constituted the carrying on of an unincorporated business within the State of New York and that this income derived therefrom was subject to unincorporated business tax in accordance with the intent and meaning of Section 703 of the Tax Law.

B. That the petition of Jack Stein for redetermination of a

deficiency of unincorporated business taxes under Article 23 of the Tax Law for the years 1960 and 1961 is denied and the notice of deficiency issued April 11, 1960 against petitioner is sustained.

DATED: Albany, New York  
*November 27, 1970*

STATE TAX COMMISSION

*Norman Gallivan*  
PRESIDENT

*Bruce Manley*  
COMMISSIONER

*Milton Koern*  
COMMISSIONER