

STATE OF NEW YORK
STATE TAX COMMISSION

*Edlin - Charles &
Beatrice
S.B.T. - lid 23
M.H.*

In the Matter of the Petition

of

CHARLES EDLIN AND
BEATRICE EDLIN

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) 1963, 1964 and 1965.

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

State of New York
County of Albany

Rae Zimmerman , 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 August , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Charles Edlin
and Beatrice Edlin (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Charles and Beatrice Edlin
3530 Henry Hudson Parkway
Riverdale, New York

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

24th day of August , 1971

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CHARLES EDLIN & BEATRICE EDLIN :

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

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) 1963, 1964 and 1965.

State of New York
County of Albany

Rae Zimmerman, 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 August, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon George Sklarew, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: George Sklarew, C.P.A.
c/o Puder and Puder
60 Park Place
Newark, New Jersey
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

24th day of August, 1971.

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CHARLES EDLIN & BEATRICE EDLIN	:	DECISION
For Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1963, 1964, and 1965.	:	

Petitioners, Charles Edlin and Beatrice Edlin, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963, 1964 and 1965 (File #32077346). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 15, 1970 at 10:45 A.M. Petitioners appeared by George Sklarew, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq. (Alexander Weiss, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioners, Charles Edlin and Beatrice Edlin, filed New York State Income Tax Resident returns for the years 1963, 1964 and 1965. They also filed New York State Unincorporated Business Tax returns for said years.

2. On January 18, 1967 petitioners, Charles Edlin and Beatrice Edlin, filed claims for credit or refund of unincorporated business tax paid for the years 1963, 1964 and 1965 upon the grounds that they had no regular place of business located in New York State subsequent to February 15, 1963.

3. On December 8, 1967 the Income Tax Bureau disallowed in full petitioners, Charles Edlin and Beatrice Edlin's, claim for credit or refund of unincorporated business tax for the years

1963, 1964 and 1965.

4. On April 1, 1968 the Income Tax Bureau issued a Statement of Audit changes against petitioner, Charles Edlin, imposing unincorporated business tax upon additional income received by him during the year 1964 as a result of a Federal audit of said return and accordingly issued a Notice of Deficiency in the sum of \$817.83.

5. During the years 1963, 1964 and 1965 petitioner, Charles Edlin, was a food broker. His income was derived from commissions received for arranging the sale by his clients of various foods to food chains. Most of the clients and food chains were located without New York State. In order for him to conduct his business, it was necessary for him to personally go to the offices or warehouses of the various food chains.

6. During the years 1963, 1964 and 1965 petitioner, Charles Edlin, maintained an office in his apartment in New York City. On Schedule "C" of his Federal income tax returns for said years he deducted a portion of the rent as a business expense. He used the telephone in the apartment in connection with his food brokerage business.

7. Subsequent to February 15, 1963 petitioner, Charles Edlin, also maintained an office in Fort Lee, New Jersey. He rented a two room suite, wherein he carried on a portion of his business. He employed a secretary in the office. He also had several telephone lines therein. On Schedule "C" of his Federal income tax returns for the years in issue, he deducted the expenses incurred in connection with said office.

8. Petitioner, Charles Edlin's gross commission income was \$174,548.58 for the year 1963, \$212,437.16 for the year 1964 and \$207,852.23 for the year 1965. His gross commission income on sales on account of suppliers located in New York State plus sales on account of buyers located in New York State was \$27,918.00 in

1964 and \$30,340.00 in 1965. He failed to prove by documentary or other sufficient evidence the percentage of his gross commissions derived for the year 1963 from outside of New York sources.

CONCLUSIONS OF LAW

A. That petitioner, Charles Edlin, subsequent to February 15, 1963 maintained regular places of business within and without New York State.

B. That attributing 13% of petitioner, Charles Edlin's net income in 1964 and 15% of his net income in 1965 to business carried on within New York State is a fair and equitable allocation of income subject to unincorporated business tax in accordance with the meaning and intent of section 707(a) of the Tax Law.

C. That petitioner, Charles Edlin, has failed to prove by documentary or other sufficient evidence the percentage of his net income during the year 1963 that was allocable to business carried on without New York State.

D. That the petition of Charles Edlin and Beatrice Edlin is granted to the extent of reducing taxable business income for unincorporated business tax purposes for the year 1964 from \$154,870.63 to \$12,146.54 and for the year 1965 from \$135,441.00 to \$12,452.91 and reducing the unincorporated business tax due for the year 1964 from \$6,194.83 to \$485.86 and for the year 1965 from \$5,418.00 to \$498.12, and the Notice of Deficiency issued April 1, 1968 is cancelled and a refund is allowed in the sum of \$5,014.59 for the year 1964 and \$4,919.88 for the year 1965 together with such interest as may be lawfully owing and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

August 24, 1971.

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Richard Bradley
COMMISSIONER

Milton Korman
COMMISSIONER