

STATE OF NEW YORK
STATE TAX COMMISSION

*Epstein, Maurice
& Stella
U. B. T.
1971*

In the Matter of the Petition

of

MAURICE EPSTEIN & STELLA EPSTEIN :

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) 1961 :

State of New York
County of Albany

Martha Funaro , 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 12th day of August , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Maurice Epstein &
Stella Epstein (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Maurice Epstein & Stella Epstein
150 East 61st Street
New York, New York 10021

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

12th day of August , 1971.

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAURICE EPSTEIN & STELLA EPSTEIN :

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) 1961 :

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

State of New York
County of Albany

Martha Funaro , 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 12th day of August , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon David Warshaw,
Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: David Warshaw, Esq.
555 Fifth Avenue
New York, New York 10036

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

12th day of August , 1971.

Martha Funaro

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MAURICE EPSTEIN AND STELLA EPSTEIN : DECISION
for Redetermination of Deficiency or for :
Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Year 1961. :

ISSUE

FINDINGS OF FACT

2. On November 27, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Maurice Epstein and Stella Epstein, imposing unincorporated business tax for the

year 1961, upon income deemed to be derived from activities as a real estate consultant and upon salary income deemed to be related to business income. It also made adjustments to conform with Federal audit information submitted by petitioners, which adjustments are not being contested by them. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,883.82.

3. During the year 1961, petitioner, Maurice Epstein, maintained an office as a real estate consultant at 285 Madison Avenue, New York, New York. He paid rent for the office. He employed a secretary. He deducted these expenses, as well as expenses for telephone, travel and other miscellaneous items, on Schedule "C" of his Federal income tax return. He was not reimbursed for any business expenses he incurred. The entities from whom he received compensation did not exercise any control or supervision over him with respect to the time, manner or means of his carrying on of his real estate activities. He reported all of the compensation received from these entities, with the exception of \$13,000.00 received from Manhattan Financial Corporation, as business income on Schedule "C" of his Federal income tax return.

4. On April 27, 1960, petitioner, Maurice Epstein, entered into an agreement with Manhattan Financial Corporation wherein he was retained as a real estate consultant in connection with the liquidation of the corporation for the period from April 27, 1960, through April 26, 1961. His compensation was to be \$3,250.00 per month plus a percentage of the net cash distributions distributed to the stockholders in liquidation. During the year 1961, he received, from Manhattan Financial Corporation, \$13,000.00 in fixed compensation for the first four months of the year and \$28,666.67 in percentage compensation. On the Federal and New York State income tax returns, the \$13,000.00

was reported as wages although the agreement provided that he was to be compensated for services as a real estate consultant. He was required to devote to the corporation "such time as shall be necessary in connection with the sale, exchange or disposition of all of the assets of the Corporation..."

5. During the year 1961, petitioner, Maurice Epstein, received \$8,275.00 in management fees for managing a building in Baltimore, Maryland.

6. During the year 1961, petitioner, Maurice Epstein, received \$10,000.00 for managing the liquidation of the assets of Lexington 38th Corporation.

7. During the year 1961, petitioner, Maurice Epstein, received \$2,100.00 from other sources. He reported this income as business income on Schedule "C" of his Federal income tax return. He failed to submit documentary or other sufficient evidence to show that said income was not received as part of his business activity as a real estate consultant.

8. During the year 1961, petitioner, Stella Epstein, was neither employed or engaged in an unincorporated business.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Maurice Epstein, during the year 1961, from Manhattan Financial Corporation, Lexington 38th Corporation, the owner of a building in Baltimore, Maryland and other sources reported as business income constituted receipts from his regular business as a real estate consultant and not compensation as an employee or fiduciary exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Maurice Epstein, during the year 1961, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincor-

porated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That since petitioner, Stella Epstein, was not engaged in an unincorporated business during the year 1961, she is not liable for unincorporated business tax for said year.

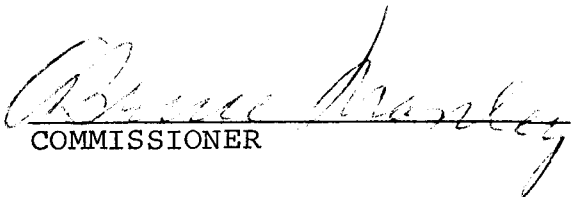
D. That the petition of Maurice Epstein and Stella Epstein is granted to the extent of cancelling the Notice of Deficiency issued November 27, 1967, as against petitioner, Stella Epstein, and, except as so granted, the petition is in all other respects denied and the Notice of Deficiency issued November 27, 1967, as against petitioner, Maurice Epstein, is sustained.

DATED: Albany, New York

August 12 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER

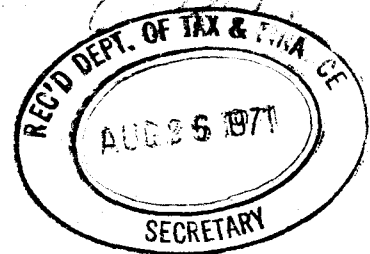


100-444-1-117B

REC-11

Maurice Epstein
150 EAST 61ST STREET
NEW YORK, N. Y. 10021

cc - Rook



August 25, 1971

Mr. Maurice Epstein
150 East 61st Street
New York, New York 10021

Re: Petition of Maurice &
Stella Epstein

Dear Mr. Epstein:

This is in reply to your letter of August 19,
1971.

While I am pleased to meet with all taxpayers concerning their tax problems, it would be inappropriate for me to meet personally with you regarding your case, as you are represented by able counsel. Further, since only the courts may review a decision of the State Tax Commission once it has been issued, such a meeting would serve no purpose.

Sincerely,

NORMAN GALLMAN
Commissioner

NG/PBC/maf

August 24, 1971

Mr. Maurice Epstein
150 East 61st Street
New York, New York 10021

Re: Petition of Maurice & Stella
Epstein

Dear Mr. Epstein:

This is to acknowledge receipt of your letter
of August 19, 1971.

The decision of August 12, 1971, represents an
exhaustion of your administrative remedies in this
matter. A proceeding in the Supreme Court of the
State of New York to review the decision of the State
Tax Commission must be commenced within four months
from the date of the decision.

Sincerely,

Norman Gallman
Commissioner

NG/PBC/maf

From **JOSEPH H. MURPHY** Commissioner

Forward original and duplicate of this form with attachments

TO: Mr. ReekBUREAU
OR OFFICE

FOR:

1. ☐ Your Information
2. ☐ Written Comments
H.G.
3. ☒ Reply for ~~J.H.M.~~ Signature
4. ☐ Your Attention And Reply Direct
To Correspondent
5. ☐ Discussion With J.H.M.

Material From The Governor's Office:

6. ☐ Reply for J.H.M. signature
and forward original and 4 copies
to Commissioner's Office
7. ☐ Suggested reply for use by the
Governor's Office and forward original
and 3 copies to Commissioner's Office

Name of Correspondent

Mr. Maurice Epstein

Address

150 East 81st StreetNew York, New York 10021

RE:

redetermination of ~~tax~~
unincorporated taxDATE 23/71

Please prepare an original and 3 copies of all written material forwarded to this office except as otherwise noted. Also, kindly return original copy of this memo with any material forwarded in regard to the matter in upper right box.

OTHER INFORMATION:

Joseph H. Murphy

8/19/71

Maurice Epstein
150 EAST 61ST STREET
NEW YORK, N. Y. 10021
HA-1-4096

Mr Rook

Please review
use & prepare
reply to my air.

August 10, 1971
per
nfg
8/10/71

Hon. Norman T. Gallman,
Albany, New York

Dear Mr. Gallman, It is probably an imposition
to ask you for something I never did in my life.

I received from my lawyer a copy of the decision
for revocation of incorporation tax.

I am writing this now copying them from the
petition. I want to assure you that it broke our
hearts. I am now 83 years old and my wife is 82 years
old. She is incapacitated excepting that she can still
write.

If either one of us had the strength to come to
Albany we would do so.

We have lived entirely all our lives and I find
now that this matter which has dragged along for
eleven years has come to us in a very inappropriate
time.

We have had many fatalities in our family and
I am compelled to give up my business which for
fifty years I enjoyed a very high reputation.

Maurice Epstein
150 EAST 61ST STREET
NEW YORK, N. Y. 10021
HA-1-4096

I feel if you gave me a few minutes of your time whenever you are in New York, at any house I would be very glad to see you. Mrs. Epstein doesn't get about very much.

If you find that the only place I could see you is in Albany I would do my utmost to get there. I feel certain if the facts were known by you, you would try to help me.

I hope you don't feel that there is an expectation on my part. We are now declining years and some friends of ours thought that by writing to you for whatever help you may be able to give us thank you for your kindness and kind regards I remain,

Very respectfully -

Maurice Epstein