

STATE OF NEW YORK
STATE TAX COMMISSION

Hirsch, Philip
UBT - HIRSCH
Article 23

In the Matter of the Petition

of
Philip Hirsch

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 and 1962

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 25th day of January, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Philip Hirsch
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Philip Hirsch
167 Beach 140th Street
Belle Harbor, 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

25th day of January, 1971.

Barbara J. ...

Claire A. Draves

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Philip Hirsch

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 and 1962:

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 25th day of January, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Abraham Spilky,

Esq.,

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Abraham Spilky, Esq.

~~56 Broad Street~~

~~New York, New York~~ 130 Clinton St.
Brooklyn, N.Y.

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

25th day of January, 1971.

South Funaro

Claire A. Draves

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12226



REASON CHECKED

Undelivered ☒ Refused

Unclaimed

Insufficient address

Moved, left no address

Not in directory

JAN 27 1971

☒ Moved, left no address
☒ Not in directory
☐ Moved, not forwardable
☐ Addressed with error

Not in Directory

Abraham Spilky, Esq.

50-Broad Street

New York, New York

CERTIFIED

No 237864

MAIL

130 Broadway ST (New York)
Abraham Spilky



STATE TAX COMMISSION

STATE OF NEW YORK

In the Matter of the Petition	:	
of	:	
PHILIP HIRSCH	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business Taxes under Article 23 of the	:	
Tax Law for the years 1961 and 1962	:	

Petitioner, Philip Hirsch, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962 (file #2-5777168). A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on May 14, 1970, at 10:45 A.M. Petitioner appeared by Abraham H. Spilky, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert J. Rossi, Esq., of counsel).

FINDINGS OF FACT

1. Petitioner, Philip Hirsch and his wife filed joint New York State income tax resident returns for the years 1961 and 1962. He did not file any unincorporated business tax returns for the years 1961 and 1962.
2. On May 10, 1965, the Income Tax Bureau issued a statement of audit changes against petitioner, Philip Hirsch, imposing unincorporated business tax upon the income reported by him as wages and upon the income received by him from his activities as a real estate broker during 1961 and 1962 upon the ground that these activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law and accordingly issued a notice of deficiency therefor in the sum of \$786.75. The statement of audit

changes determined that his net profit from business was \$14,126.10 in 1961 and \$19,825.00 in 1962. It also determined that his taxable business income was \$6,300.88 in 1961 and \$10,860.00 in 1962. It further determined that the unincorporated business tax due was \$252.04 for 1961 and \$434.40 for 1962.

3. Petitioner, Philip Hirsch during the years 1961 and 1962 was a licensed real estate broker. He maintained an office and a business telephone. However he did not hold himself out to the general public as a dealer in mortgages or real estate.

4. Petitioner, Philip Hirsch, was the sole stockholder of Cobal Garage, Inc. He managed the real property owned by the corporation and received a salary from it of \$5,200.00 in 1961 and \$5,200.00 in 1962. He received W-2 forms from it for this income. The corporation withheld social security taxes but did not withhold federal and New York State income taxes. Petitioner reported this income as wages on his 1961 and 1962 New York State income tax resident returns.

5. Petitioner, Philip Hirsch, was the sole stockholder of 418 Trading Corporation, Carlin Trading Corp., Carvel Trading Corp. and Mirivell Estates, Inc. He handled the financial and collection services for them and managed the real estate and mortgages owned by them. In 1961 he received \$3,500.00 from 418 Trading Corporation and in 1962 he received \$5,000.00 from 418 Trading Corporation, \$3,500.00 from Carlin Trading Corp. \$5,000.00 from Carvel Trading Corp. and \$1,000.00 Mirivell Estate, Inc. as fees for the aforesaid services.

6. Petitioner, Philip Hirsch, in 1961 received a \$2,000.00 payment for extending a mortgage personally held by him on 2-4 St. Nicholas Terrace.

7. Petitioner, Philip Hirsch, conceded that \$80.00 received by him in 1961 and \$125.00 received by him in 1962 was income received from third parties for services he rendered as a real estate broker.

8. Petitioner, Philip Hirsch, failed to show by documentary or other sufficient evidence that the \$3,396.10 received by him in 1961 from "Meriton" was not received as a fee for real estate services rendered by him.

CONCLUSIONS OF LAW

A. That the sum of \$10,400.00 received by petitioner, Philip Hirsch, during the years 1961 and 1962 from Cobal Garage, Inc. constituted wages as an employee exempt from the imposition of unincorporated business tax in accordance with the intent and meaning of Section 703(b) of the Tax Law and not receipts from his regular business of real estate brokerage and management.

B. That the sum of \$2,000.00 received in the year 1961 by petitioner, Philip Hirsch, for the extension of a mortgage on 2-4 St. Nicholas Terrace constituted income received by him as a result of his personal holding of an interest in real property exempt from the imposition of unincorporated business tax in accordance with the intent and meaning of Section 703(e) of the Tax Law and not receipts from his regular business of real estate brokerage and management.

C. That the sums of \$3,500.00 received in the year 1961 and \$14,500.00 received in the year 1962 by petitioner, Philip Hirsch, as fees for the management of interests in real estate of corporations wholly owned by him constituted receipts from his regular business of real estate brokerage and management and not income received as an owner, lessee or fiduciary of real estate in accordance with

the meaning and intent of Section 703(e) of the Tax Law, as he was not the owner, lessee or fiduciary of the corporate properties. In Re Schirrmeister's Estate, 8 A.D. 2d 180, 186 N.Y.S. 2d 826 (3rd Dept. A, 1959).

D. That the aforesaid activities of petitioner, Philip Hirsch, during the years 1961 and 1962 in connection with "Meriton", the services rendered for third parties as a real estate broker and the management services rendered for wholly owned corporations constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of Section 703 of the Tax Law.

E. That the petition of Philip Hirsch for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law is granted to the extent of reducing his taxable business income for the year 1961 from \$6,300.88 to \$540.88 and for the year 1962 from \$10,860.00 to \$6,700.00 and of reducing the unincorporated business tax due for year 1961 from \$252.04 to \$21.64 and for the year 1962 from \$434.40 to \$268.00 and the notice of deficiency issued May 10, 1965 is reduced to \$289.64 together with such interest as may be due.

DATED: Albany, New York

January 25, 1971

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Benjamin

COMMISSIONER

William Korman

COMMISSIONER