

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID J. BEIER

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) 1964 & 1965 :

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 3rd day of May , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon David J. Beier

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: David J. Beier  
c/o Samuel K. Beier  
250 Broadway  
New York, 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

3rd day of May , 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
DAVID J. BEIER

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OF NOTICE OF DECISION  
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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) 1964 & 1965 :

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 3rd day of May, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Samuel K. Beier

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Samuel K. Beier  
250 Broadway  
New York, 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.

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3rd day of May, 1972

Rae Zimmerman

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

May 3, 1972

David J. Beier  
c/o Samuel K. Beier  
250 Broadway  
New York, New York

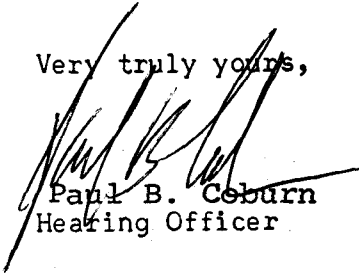
Dear Sir:

Please take notice of the DECISION of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)  
722 of the Tax Law any proceeding  
in court to review an adverse decision must be commenced  
within 4 Months after the date of this notice.

Any inquiries concerning the computation of tax due or  
refund allowed in accordance with this decision or  
concerning any other matter relating hereto may be  
addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

  
Paul B. Ceburn  
Hearing Officer

cc Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DAVID J. BEIER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1964 and 1965.	:	

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Petitioner, David J. Beier, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964 and 1965. (File No. 46139904). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, for January 17, 1972, at 1:30 P.M. On said date, petitioner's representative, Samuel Beier, Esq., waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Was the business income and salary received by petitioner, David J. Beier, during the years 1964 and 1965, from his activities as a real estate broker and renting and managing agent, subject to the New York State unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, David J. Beier, and his wife filed New York State income tax resident returns for the years 1964 and 1965. He did not file New York State unincorporated business tax returns for said years.

2. On February 19, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, David J. Beier, imposing unincorporated business tax for the years 1964 and 1965 upon his income derived from his activities as a real estate broker and rental and managing agent, and upon his salary income deemed to be related to his business income and accordingly issued a Notice of Deficiency in the sum of \$1,009.32.

3. Petitioner, David J. Beier, was an independent real estate broker and rental agent during the years 1964 and 1965. He derived his commissions from the managing of real estate, the sale of real estate, the renting of apartments, and the recommending of furniture moving services. His net business income from commissions totaled \$11,419.00 in 1964 and \$17,976.47 in 1965.

4. Petitioner, David J. Beier, was employed by Alamac Estates, Inc. between January 1, 1964 and August 31, 1965. He received a salary of \$500.00 a month. The corporation withheld Federal and New York State income taxes and social security tax from the salary paid to him. His services for the corporation consisted of general supervision of the Alamac Hotel, which was owned by the corporation and operated by a lessee. He devoted approximately 25% of his time to the affairs of the corporation. He reported approximately four times a week to Alexander Gross who was president of the corporation, his immediate supervisor and his father-in-law. He had no written employment contract. His services were terminated by the corporation on August 31, 1965.

5. The offices of Alamac Estates, Inc. were located at the Hotel New Yorker, 485 Eighth Avenue in New York City during the years 1964 and 1965. Petitioner, David J. Beier, used these offices for all of his business activities.

6. Petitioner, David J. Beier, received a salary of \$900.00 from Park Towers Associates Ltd., during the year 1965. Federal income tax and social security tax were withheld by said corporation from the salary paid to him. He failed to submit any documentary or other substantial evidence to prove that the salary was paid to him for services other than the managing or rental of real estate.

CONCLUSIONS OF LAW

A. That petitioner, David J. Beier's activities as a real estate broker and renting and managing agent during the years 1964 and 1965 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

B. That the services rendered by petitioner, David J. Beier, during the years 1964 and 1965 as an employee of Alamac Estates, Inc. and Park Tower Associates Ltd., were so integrated and interrelated with his activities in connection with his unincorporated real estate brokerage and renting and managing agent business as to constitute part of a business regularly carried on by him, and, therefore, the salary received by him for services as an employee of said corporations was not exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

C. That the petition of David J. Beier is denied and the Notice of Deficiency issued February 19, 1968, is sustained.

DATED: Albany, New York

*May 3, 1972.*

STATE TAX COMMISSION

*Norman Gallman*  
COMMISSIONER

*Bruce Brancley*  
COMMISSIONER

*Milton Krenn*  
COMMISSIONER