STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ELLIOT COHEN

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) 1962, 1963 & 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 23rd day of February, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Theodore Propp, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Theodore Propp, Esq.
40 Worth Street
New York, New York 10013

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
23rd day of February, 1972.

Martha Funaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ELLIOT COHEN

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) 1962, 1963 & 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 23rd day of February, 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon Elliot Cohen (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Elliot Cohen
36 East 36th Street
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

23rd day of February, 19 72

Martha Funaro

Linda Wilson

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

February 23, 1972

Elliot Cohen
16 East 36th Street
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 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,

Lawrence A. Newman
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

AD-1.12 (7/70)

STATE OF NEW YORK

STATE TAX COMMISSION

| | | |
|---|---|---|
| In the Matter of the Petition | : | |
| of | : | |
| ELLIOT COHEN | : | DECISION |
| for a Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Years 1962, 1963 and 1965. | : | |

Elliot Cohen petitioned for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1962, 1963 and 1965. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on December 16, 1970. The petitioner appeared and was represented by Theodore Propp, Esq., (Jeffrey Loubet, Esq. and Philip H. Busner, Esq., of Counsel). The Income Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

## ISSUE

Whether the insurance-related business activities of the petitioner during the years in issue constituted the carrying on of an unincorporated business, and the income therefrom subject to the unincorporated business tax.

## FINDINGS OF FACT

1. The petitioner, Elliot Cohen, filed New York State income tax resident returns for the years 1962, 1963 and 1965, but did not file unincorporated business tax returns.

2. Based on a finding by the Income Tax Bureau that the business activities of the petitioner constituted the carrying on of an unincorporated business, the following notices of deficiency were issued:

a.) May 22, 1967, Years 1962 and 1963, file numbered 35478435, in the amount of $2,356.14, plus delinquency penalties of 25% and statutory interest;

b.) November 27, 1967, Year 1965, file numbered 48075744, in the amount of $731.74, plus delinquency penalty of 25% and statutory interest.

3. Petitions for redetermination of the deficiencies were timely filed.

4. During the years in issue, the petitioner was licensed by the Insurance Department of the State of New York as an insurance adjuster, as an insurance broker and as a life insurance agent.

5. The petitioner's income during the years in issue was derived from three sources:

a.) fees from individuals, partnerships and corporations adjusting commercial claims with insurance companies,

b.) commissions as an independent life insurance agent from eight to ten life insurance companies, and

c.) income from three related corporations as an insurance broker consisting of a percentage of gross yearly premiums. Of the total, an advance of $100.00 per week, labeled as "salary", from which social security and income taxes were withheld, was apportioned among the three corporations.

6. All of the activities of the petitioner were conducted from an office located at 10 East 40 Street, New York City. The same office was occupied by the three related corporations from whom the petitioner derived his income as an insurance broker. The petitioner was a director in each of the corporations, but was not an officer

or stockholder. Each corporation had its own clients and kept separate books of account.

7. The petitioner performed some administrative and supervisory functions on behalf of each corporation. However, there was no division of time with respect to the services rendered to each corporation, and the primary services performed by the taxpayer for the corporations were those usually performed by a licensed insurance broker. Except for the nominal amount of $100.00 per week, there was no tax withheld on the compensation from the corporation.

8. In addition, the petitioner conducted a life insurance business and an insurance adjustment service at the office of his principal with no clear division of time between the activities. The petitioner was given a free hand by his principals to do what he wanted, and to come and go as he pleased.

9. The petitioner has failed to prove that the usual characteristics of an employer-employee relationship existed between the petitioner and his principals. The petitioner, therefore, is not found to be an employee.

DECISION

A. The insurance related business activities of the petitioner during the years 1962, 1963 and 1965 constituted the carrying on of an unincorporated business, and the income therefrom is subject to the unincorporated business tax.

B. The notices of deficiency are sustained and the petitions are denied.

DATED: Albany, New York
February 23, 1972

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER

Mr. Edward Rook
Lawrence A. Newman
In the Matter of the Petition of
Elliott Cohen for a Redetermination
of a Deficiency or for Refund of
Unincorporated Business Taxes under
Article 23 of the Tax Law for the
Years 1962, 1963 and 1965.

May 16, 1972
Hearing Unit
Executive Bureau

Mr. Theodore Propp, the attorney of record in this case, and as a result of a phone conversation with me, has addressed a letter to me regarding the Commission decision dated February 23, 1972. In effect, his letter is an offer to pay the basic tax and simple interest at 6% per annum if that is acceptable to the State Tax Commission. In return, the taxpayer would forego pursuing any Article 78 proceeding. His letter is attached for your review.

In the course of the hearing, Mr. Propp requested a reduction in the penalties to simple interest but any action on this request was not contained in the decision.

Based on my own knowledge of this case, I would recommend to you the favorable consideration to his request. If you approve, I further recommend requesting the Operating Bureau (through the Law Bureau) to compute the current amount due with interest and that we notify the representative of our proposed action and invite his tender of the amount due.

Lawrence A. Newman

Lawrence A. Newman

LAN/lw

Approved
6/21/72
R. Manley
Lawrence Newman
6/21/72

POLETTI FREIDIN PRASHKER FELDMAN & GARTNER
777 THIRD AVENUE
NEW YORK, N. Y. 10017

NEW YORK N.Y. MAY 12 '72 U.S. POSTAGE .08 P.B. METER 870024

Albany District Office - 1st Floor Bldg 9

Mr. Lawrence A. Newman
Hearing Officer
New York State Department
of Taxation and Finance
Building 9
State Campus
Albany, New York 12226

GRAND CENTRAL STATION

NEW YORK NY MAY 12 4 PM 1972

POLETTI FREIDIN PRASHKER FELDMAN & GARTNER

777 THIRD AVENUE

NEW YORK, N. Y. 10017

JESSE FREIDIN (1909-1968)

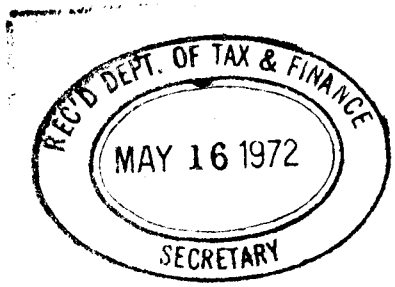
ROBERT L. CARTER
JUSTIN N. FELDMAN
PAUL R. FRANK
MURRAY GARTNER
EVERETT M. GOULARD
PAUL R. GRAND
PEYTON H. MOSS
HERBERT PRASHKER
THEODORE PROPP
LAWRENCE H. REILLY
ERIC ROSENFELD
GEORGE J. SOLOMON

AREA CODE 212
688-3200

CABLES-POLETFRE

CHARLES POLETTI
COUNSEL

May 12, 1972




Mr. Lawrence A. Newman
Hearing Officer
New York State Department
of Taxation and Finance
Building 9
State Campus
Albany, New York 12226

Re: In the Matter of the Petition of Elliott Cohen for a Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Years 1962, 1963 and 1965.

Dear Mr. Newman:

The Decision of the State Tax Commission in the above matter dated February 23, 1972, makes no mention of the addition to tax under §685(a) of the Tax Law for the above-named taxpayer's failure to file unincorporated business tax returns for the years 1962, 1963 and 1965.

On behalf of the taxpayer, we hereby offer to make payment of the entire deficiencies, plus six percent interest per annum, and forego pursuing an Article 78 proceeding for judicial review of the Decision on the merits in exchange for the State Tax Commission's abating the entire penalties with respect to the above years, i.e., additions to tax in the amount of $345.69 for the taxable year 1962, $243.34 for 1963 and $182.93 for the year 1965, pursuant to the authority granted to it under Tax Law §697(c). Petition of George Frei, Decision of the State Tax Commission, January 23, 1970, which we cited in the citation of authorities submitted at the hearing, dictates that a taxpayer is not liable for the addition to tax under

§685(a) of the Tax Law if his failure to file unincorporated business tax returns is due to his reliance upon professional advice. As the taxpayer testified in the hearing (Record, p. 36), his failure to file unincorporated business tax returns was a result of his accountant's advice that he was not liable for said tax and was not required to file unincorporated business tax returns.

Sincerely,

Theodore Propp
[Power of Attorney on file]

JL/TP/ep

AD 53 (2-68)

# DEPARTMENT OF TAXATION AND FINANCE

## MEMORANDUM

**TO:** Mr. Edward Rook
**FROM:** Lawrence A. Newman
**SUBJECT:** In the Matter of the Petition of Elliott Cohen for a Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Years 1962, 1963 and 1965.

**DATE** May 16, 1972
**OFFICE** Hearing Unit
Executive Bureau

Mr. Theodore Propp, the attorney of record in this case, and as a result of a phone conversation with me, has addressed a letter to me regarding the Commission decision dated February 23, 1972. In effect, his letter is an offer to pay the basic tax and simple interest at 6% per annum if that is acceptable to the State Tax Commission. In return, the taxpayer would forego pursuing any Article 78 proceeding. His letter is attached for your review.

In the course of the hearing, Mr. Propp requested a reduction in the penalties to simple interest but any action on this request was not contained in the decision.

Based on my own knowledge of this case, I would recommend to you the favorable consideration to his request. If you approve, I further recommend requesting the Operating Bureau (through the Law Bureau) to compute the current amount due with interest and that we notify the representative of our proposed action and invite his tender of the amount due.

Lawrence A. Newman

Lawrence A. Newman

James Scott, Associate Attorney
Lawrence A. Newman
Elliot Cohen
Payment by taxpayer of amount due
as a result of formal hearing.

June 28, 1972
Hearing Unit

Attached with our transmittal to you of the taxpayer's complete formal hearing file are the following:

1. Six checks aggregating $4,611.54 representing payment of the deficiency and interest at 6% per annum to July 15, 1972.

2. Letter of transmittal accompanying the checks from Mr. Theodore Propp, the taxpayer's attorney.

3. A xerox copy of my memorandum approved with the approval of the State Tax Commission reducing the penalties and interest to 6% per annum.

Please forward all the materials to the operating bureau for processing and consider the case as closed.

LAN

Lawrence A. Newman

Enclosures

LAN/lw

June 28, 1972

Mr. Theodore Propp
777 Third Avenue
New York, New York 10017

Re: Elliot Cohen

Dear Mr. Propp:

We acknowledge receipt of your six checks drawn on the account of Mr. Cohen aggregating $4,611.54. This amount includes your computation of interest to July 15, 1972 at 6% per annum as approved by the State Tax Commission.

The entire file has been forwarded to the Income Tax Bureau for deposit of the checks and for processing.

I assume you will receive any further notifications regarding this matter directly from that bureau.

Very truly yours,

LAN

Lawrence A. Newman
Assistant District Tax Supervisor

cc: James Scott, Esq.
Law Bureau

LAN/lw

June 16, 1970

Mr. Theodore Troje
777 Third Avenue
New York, New York 10017

Re: Milton Crane

Dear Ted:

We acknowledge receipt of your air waybill [illegible] on the account of Mr. Milton Aspernheim [illegible] This account has been [illegible] purchasing of interest to July 15, 1970 and [illegible] as approved by Internal Revenue Service.

The duties [illegible] have been forwarded to the Income Tax Bureau for deposit of the checks and for processing.

I assume you will receive any Internal Revenue notices concerning this matter directly from them.

Very truly yours,

Lawrence A. Hansen
Assistant District Director

cc: James Smith, Esq.
Lev Edwards

LAH:lw

POLETTI FREIDIN PRASHKER FELDMAN & GARTNER

777 THIRD AVENUE

NEW YORK, N. Y. 10017

JESSE FREIDIN (1909-1968)

ROBERT L. CARTER
JUSTIN N. FELDMAN
PAUL R. FRANK
MURRAY GARTNER
PAUL R. GRAND
ROBERT MORRIS
PEYTON H. MOSS
HERBERT PRASHKER
THEODORE PROPP
LAWRENCE H. REILLY
ERIC ROSENFELD
GEORGE J. SOLOMON

AREA CODE 212
688-3200

CABLES-POLETFRE

CHARLES POLETTI
COUNSEL

June 23, 1972

Mr. Lawrence A. Newman
Hearing Officer
New York State Department
of Taxation and Finance
Building 9, Room 21A
State Campus
Albany, New York 12226

Re: Elliot Cohen

Dear Mr. Newman:

In accordance with my telephone conversation with you earlier this week, when you advised me that the delinquency penalty was being eliminated, I am enclosing six checks representing unincorporated business tax and interest for the years 1962, 1963 and 1965. The interest has been computed to July 15, 1972 at the rate of 6% per annum, as follows:

| | Deficiency | Interest | Total |
|---|---|---|---|
| 1962 | 1382.77 | 767.44 | 2150.21 |
| 1963 | 973.37 | 481.82 | 1455.19 |
| 1965 | 731.74 | 274.40 | 1006.14 |
| | 3087.88 | 1523.66 | 4611.54 |

I expect that I will be receiving some final report or confirmation that the penalty has been removed and the liability for the covered years has been paid in full.

Very truly yours,

Theodore Propp

TP:fk
Encl.
cc: Mr. Elliot Cohen
36 E. 36th St.
New York, N. Y.

No. 172

1-2
210

ELLIOT COHEN
HELEN COHEN

6/21 1972

Pay to the order of State Tax Commission $ 973 37/xx

Nine hundred seventy three and 37/xx Dollars

THE CHASE MANHATTAN BANK
NATIONAL ASSOCIATION
269 MADISON AVE. NEAR 39TH ST.
NEW YORK, N.Y. 10016

Elliot Cohen

⑆0210⑈0002⑆ 019⑈1⑈037449⑈

No. 171

1-2
210

ELLIOT COHEN
HELEN COHEN

6/21 1972

Pay to the order of State Tax Commission $ 767 44/xx

Seven hundred sixty seven and 44/xx Dollars

THE CHASE MANHATTAN BANK
NATIONAL ASSOCIATION
269 MADISON AVE. NEAR 39TH ST.
NEW YORK, N.Y. 10016

Elliot Cohen

⑆0210⑈0002⑆ 019⑈1⑈037449⑈

No. 170

1-2
210

ELLIOT COHEN
HELEN COHEN

6/21 1972

Pay to the order of State Tax Commission $ 1387 77/xx

One thousand eighty two and 77/xx Dollars

THE CHASE MANHATTAN BANK
NATIONAL ASSOCIATION
269 MADISON AVE. NEAR 39TH ST.
NEW YORK, N.Y. 10016

Elliot Cohen

⑆0210⑈0002⑆ 019⑈1⑈037449⑈

No. 125

1-2
210

ELLIOT COHEN
HELEN COHEN

6/21 1972

Pay to the order of State Tax Commission $774 40/xx

Two hundred seventy four and 40/xx Dollars

THE CHASE MANHATTAN BANK
NATIONAL ASSOCIATION
269 MADISON AVE. NEAR 39TH ST.
NEW YORK, N.Y. 10016

Elliot Cohen

⑆0210⑈0002⑆ 019⑈1⑈037449⑈

No. 124

1-2
210

ELLIOT COHEN
HELEN COHEN

6/21 1972

Pay to the order of State Tax Commission $731 74/xx

Seven hundred thirty one and 74/xx Dollars

THE CHASE MANHATTAN BANK
NATIONAL ASSOCIATION
269 MADISON AVE. NEAR 39TH ST.
NEW YORK, N.Y. 10016

Elliot Cohen

⑆0210⑈0002⑆ 019⑈1⑈037449⑈

No. 123

1-2
210

ELLIOT COHEN
HELEN COHEN

6/21 1972

Pay to the order of State Tax Commission $481 82/xx

Four hundred eighty one and 82/xx Dollars

THE CHASE MANHATTAN BANK
NATIONAL ASSOCIATION
269 MADISON AVE. NEAR 39TH ST.
NEW YORK, N.Y. 10016

Elliot Cohen

⑆0210⑈0002⑆ 019⑈1⑈037449⑈