

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY FORSTER

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

Lynn Wilson , 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 4th day of April , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon HENRY FORSTER

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Henry Forster
169 East 78th Street, Apt. 9B
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

4th day of April , 1972.

Frank Funes

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY FORSTER

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

Lynn Wilson, 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 4th day of April, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon FREDERICK & GOGLIO (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Frederick & Goglio
167 Willis Avenue
Mineola, New York 11501
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

4th day of April, 1972.

Martha F. Farnsworth

Lynn Wilson



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
April 4, 1972

Mr. Henry Forster
169 East 78th Street, Apt. 9B
New York, New York 10021

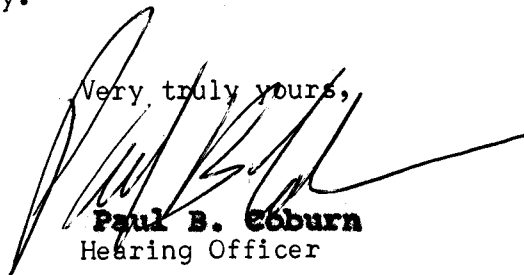
Dear Mr. Forster:

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. Coburn
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HENRY FORSTER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1961 and 1962.	:	

Petitioner, Henry Forster, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962. (File No. 2-6709866). 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 November 17, 1970 at 1:30 P.M. Petitioner appeared by Frederick & Goglio, Esqs. (Irving Frederick, Esq. of counsel). The Income Tax Bureau appeared by Edward H. Best, Esq. (Solomon Sies, Esq. of counsel).

FINDINGS OF FACT

1. Petitioner, Henry Forster, and his wife filed a New York State Combined Income Tax Return for the year 1961. He filed a New York State Income Tax Resident Return for the year 1962. He did not file any unincorporated business tax returns for said years.

2. On September 13, 1965 the Income Tax Bureau issued a statement of audit changes against petitioner, Henry Forster, imposing unincorporated business tax for the years 1961 and 1962, upon the salary income received by him from Douglas Gibbons-Hollyday & Ives, Inc. and Winmore Realty Corp. and from reported income from other sources upon the grounds that the income received from these sources constituted the carrying on of an

unincorporated business in accordance with the provisions of Article 23 of the Tax Law. The statement of audit changes further imposed a penalty pursuant to Section 685(a) of the Tax Law in the sum of \$185.94, for failure to file unincorporated business tax returns for the years 1961 and 1962. In accordance with the aforesaid a Notice of Deficiency was issued in the sum of \$1,064.91.

3. Petitioner, Henry Forster, was a licensed real estate broker and insurance broker. During the years 1961 and 1962 he was listed in the phone book under his own name. He paid for the costs of his personal secretary. The firms from whom he received compensation did not exercise any control over him with respect to time spent or his manner and means of carrying on his real estate and insurance activities.

4. The income received by petitioner, Henry Forster, during the years 1961 and 1962 from Beauvais Realty Corporation, Valeray Real Estate Company, Inc., Charles J.B. Stuart, Mrs. J. Edward Meyer, Jr., and Watkins, Vought & Upchurch, Inc., were commissions paid to him in consideration for services rendered as a real estate broker, real estate consultant and insurance broker.

5. During the years 1961 and 1962 petitioner, Henry Forster, was vice chairman of Douglas Gibbons-Hollyday & Ives., Inc. His activities on its behalf consisted of acting as a real estate broker trying to make deals. It withheld Federal and New York State income taxes and Social Security taxes from a portion of the compensation paid to him.

6. During the years 1961 and 1962 petitioner, Henry Forster, was also an officer and director of Winmore Realty Corp. His activities on its behalf consisted of advising it as to the management of its properties. It withheld Federal and New York State income taxes and Social Security taxes from a portion of the compensation paid to him.

7. During the year 1962, petitioner, Henry Forster, was a trustee of the First National Real Estate Trust. His activities on its behalf consisted of investigating properties it was going to buy. It did not withhold any New York State or Federal income tax or Social Security tax from the fees paid to him. The amount of the fees paid to him was based upon a percentage of the assets of the trust.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Henry Forster, during the years 1961 and 1962 from Douglas Gibbons-Hollyday & Ives, Inc., Winmore Realty Corp., First National Real Estate Trust, Beauvais Realty Corporation, Valeray Real Estate Company, Inc., Charles J.B. Stuart, Mrs. J. Edward Meyer, Jr. and Watkins, Vought & Upchurch, Inc. constituted receipts from his regular business as a real estate broker and consultant and as an insurance broker 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, Henry Forster, during the years 1961 and 1962 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.

C. That the failure of petitioner, Henry Forster, to file unincorporated business tax returns for the years 1961 and 1962 was for reasonable cause in accordance with the meaning and intent of Section 685(a) of the Tax Law.

D. That the petition of Henry Forster is granted to the extent of cancelling the 25% penalty imposed pursuant to Section 685(a) of the Tax Law and the Notice of Deficiency issued September 13, 1965 is reduced to the sum of \$878.97 together with such interest as may be due on said sum from

September 13, 1965 and, except as so granted, the petition is
in all other respects denied.

DATED: Albany, New York

April 4, 1972.

STATE TAX COMMISSION

Norman Gallivan
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Korman
COMMISSIONER