

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JERRY L. GORDON

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) 1963, 1964 and  
1965

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

State of New York  
County of Albany

Rae Zimmerman 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

Jerry L. Gordon (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Jerry L. Gordon  
4 Martin Court  
Great Neck, 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.

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JERRY L. GORDON

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)) 1963, 1964 & :  
1965

State of New York  
County of Albany

Rae Zimmerman , 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 Segal, 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 Segal, Esq.  
Handler, Kleiman & Sukenik  
233 Broadway  
New York, 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

3rd day of May , 1972.

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
JERRY L. GORDON

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)) 1963, 1964 & :  
1965

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

State of New York  
County of Albany

Rae Zimmerman , 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  
Pincus Iseson, C.P.A. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Pincus Iseson, C.P.A.  
111 West 57th 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

3rd day of May , 1972.

Lynn Wilson

Rae Zimmerman



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

Jerry L. Gordon  
4 Martin Court  
Great Neck, New York

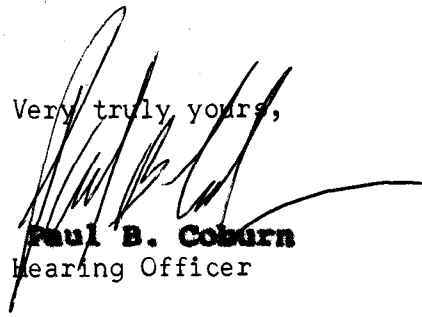
Dear Mr. Gordon:

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

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In the Matter of the Petition	:	
of	:	
JERRY L. GORDON	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1963, 1964 and 1965.	:	

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Petitioner, Jerry L. Gordon, 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 1963, 1964 and 1965. (File No. 46005741). 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 July 13, 1971 at 2:35 P.M. Petitioner appeared by David Segal, Esq., and Pincus Iseson, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

#### ISSUES

I. Did petitioner, Jerry L. Gordon's, activities in managing real estate during the years 1963, 1964 and 1965 constitute the carrying on of an unincorporated business?

II. Did the statute of limitations bar the issuance of a Notice of Deficiency for unincorporated business tax due for the years 1963, 1964 and 1965 against petitioner, Jerry L. Gordon?

III. Did petitioner, Jerry L. Gordon, have reasonable cause for failing to file unincorporated business tax returns for the years 1963, 1964 and 1965?

FINDINGS OF FACT

1. Petitioner, Jerry L. Gordon, and his wife filed New York State income tax resident returns for the years 1963, 1964 and 1965. He did not file New York State unincorporated business tax returns for said years.

2. On July 28, 1969 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Jerry L. Gordon, imposing unincorporated business tax upon the income received by him from his activities in managing real estate during the years 1963, 1964 and 1965. It also imposed a penalty in the sum of \$547.40 for failure to file unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$3,315.73.

3. During the years 1963, 1964 and 1965, petitioner Jerry L. Gordon, together with his father and mother, were the only stockholders of fifteen corporations which owned commercial real property. He was an officer and director of all of the corporations. He managed the properties owned by the corporations. He received management fees from the various corporations totaling \$33,950.00 in 1963, \$22,987.50 in 1964 and \$27,400.00 in 1965. The compensation that he received was based upon a percentage of the rentals. He received no other remuneration from the corporations for his services. Federal and New York State income taxes and social security tax were not withheld by the various corporations from the compensation paid to him. He did not manage any properties other than those owned by the corporations. He did not advertise or have any listings as a

manager of real estate. He did not have any business expenses as a manager of real estate as all expenses were paid by the respective corporations. The corporations did not exercise any substantial control or supervision over his management activities or techniques.

4. Petitioner, Jerry L. Gordon, was not aware at the time that he filed his personal income tax returns for the years 1963, 1964 and 1965 that he was also required to file unincorporated business tax returns reflecting the unincorporated business tax on his net income from managing real estate for said years.

5. On his 1963 personal income tax return, petitioner, Jerry L. Gordon, listed his income from managing real estate as "other management commissions". On his 1964 and 1965 personal income tax returns he listed his income from managing real estate as "other sources".

#### CONCLUSIONS OF LAW

A. That the income received during the years 1963, 1964 and 1965 by petitioner, Jerry L. Gordon, as fees for the management of the real estate interests of corporations in which he was a stockholder constituted receipts from his regular business of real estate management and not income received as an owner, lessee or fiduciary of real estate as he was not the owner, lessee or fiduciary of the corporate properties in accordance with the meaning or intent of section 703(e) of the Tax Law.

B. That the income received during the years 1963, 1964 and 1965 by petitioner, Jerry L. Gordon, as fees for the management of the real estate interests of corporations in which he was a stockholder constituted receipts from his regular business of real estate

management and not compensation received as an employee 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 aforesaid activities during the years 1963, 1964 and 1965 of petitioner, Jerry L. Gordon, 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.

D. That since petitioner, Jerry L. Gordon, failed to file New York State unincorporated business tax returns for the years 1963, 1964 and 1965, the Notice of Deficiency, although issued more than three years after the dates prescribed for the filing of such returns, is not barred by the statute of limitations in accordance with the meaning and intent of section 683(c)(1)(A) of the Tax Law. A statement on his 1963 personal income tax return listing the income in question as "other management commissions" and on his 1964 and 1965 personal income tax returns listing the income in question as "other sources" does not constitute the filing of an unincorporated business tax return for said years.

E. That petitioner, Jerry L. Gordon, did not have reasonable cause for failing to file unincorporated business tax returns for the years 1963, 1964 and 1965 since ignorance of the law is not considered reasonable cause and therefore a penalty pursuant to section 685(a) of the Tax Law was properly assessed.



F. That the petition of Jerry L. Gordon is denied and the Notice of Deficiency issued July 28, 1969 is sustained.

DATED: Albany, New York

*May 3, 1972*

STATE TAX COMMISSION

*Norman Gallman*  
COMMISSIONER

*Bruce Maxley*  
COMMISSIONER

*Milton Koern*  
COMMISSIONER