

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD F. HOWARD AND VYVYAN HOWARD

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, 1962, :  
1963 and 1964.

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 5th day of April , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon EDWARD F. HOWARD  
AND VYVYAN HOWARD (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Edward F. and Vyvyan Howard  
65-20 Booth Street  
Forest Hills, New York 11374  
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

5th day of April , 19 72

Martha Funnell

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD F. HOWARD AND VYVYAN HOWARD

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Tax Law for the (Year(s) 1961, 1962, :  
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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 5th day of April , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon DANIEL MILLMAN

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

wrapper addressed as follows: Mr. Daniel Millman  
One East 42nd 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

5th day of April , 19 72

Martha Fucaro

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 5, 1972**

**Edward F. and Vyvyan Howard**  
**65-20 Booth Street**  
**Forest Hills, New York 11374**

**Dear Sir and Madam:**

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 Petitions :  
of :  
EDWARD F. HOWARD AND VYVYAN HOWARD : DECISION  
for Redetermination of Deficiency or for :  
Refund of Unincorporated Business Tax :  
under Article 23 of the Tax Law for the :  
Years 1961, 1962, 1963 and 1964. :

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Petitioners, Edward F. Howard and Vyvyan Howard, have filed petitions for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1961, 1962, 1963 and 1964. (File Nos. 1-8412400 and 12126087). 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 April 21, 1971, at 1:15 P.M. Petitioners appeared by Daniel Millman, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

I. Were the services rendered by petitioner, Edward F. Howard, as an officer of The Edward F. Howard Corporation so interrelated and integrated with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him?

FINDINGS OF FACT

1. Petitioners, Edward F. Howard and Vyvyan Howard, filed New York State unincorporated business tax returns for the years 1961, 1963 and 1964. They reported as taxable income on these returns the net income received from the unincorporated business, but omitted from taxable income the salary paid to petitioner,

Edward F. Howard, by The Edward F. Howard Corporation. They did not file an unincorporated business tax return for the year 1962.

2. On March 15, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Edward F. Howard and Vyvyan Howard, imposing unincorporated business tax for the year 1961 upon the salary income received by petitioner, Edward F. Howard, from The Edward F. Howard Corporation, and accordingly issued a Notice of Deficiency in the sum of \$206.11.

3. On March 28, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Edward F. Howard and Vyvyan Howard, imposing unincorporated business tax for the years 1962, 1963 and 1964 upon the salary received by petitioner, Edward F. Howard, from The Edward F. Howard Corporation. It also imposed a penalty for the year 1962 for failure to file an unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes it issued a Notice of Deficiency in the sum of \$805.62.

4. During the years 1961, 1962, 1963 and 1964, petitioner, Edward F. Howard, was the sole proprietor of The Edward F. Howard Company. The company was engaged in the business of preparing various types of booklets to be used generally by industrial corporations for public relations purposes. These materials were used by these corporations to obtain goodwill among their employees and stockholders and in their communities. These materials were not used to sell any particular products or services of these corporations. He devoted 50% of his time to the business affairs of the company.

5. During the years 1961, 1962, 1963 and 1964, petitioner, Edward F. Howard, was the sole stockholder and president of The Edward F. Howard Corporation, a New York corporation subject to

the corporate franchise tax under Article 9-A of the Tax Law. He received a salary from the corporation of \$7,800.00 in 1961, \$13,000.00 in 1962, \$9,880.00 in 1963, and \$1,560.00 in 1964. Federal and New York State income taxes and social security tax were withheld from the salary paid to him. He reflected this income as wages on the New York State income tax resident returns. He devoted 50% of his time to the business affairs of the corporation.

6. During the years 1961, 1962, 1963 and 1964, The Edward F. Howard Corporation was engaged in the business of preparing various types of booklets to be used generally by industrial corporations for sales and marketing purposes. These booklets were used by these corporations to sell their products or services. These materials were not used for public relations purposes by these corporations. The Edward F. Howard Corporation operated from the same offices and had the same telephone number as The Edward F. Howard Company. It had its own listing in the telephone directory. It maintained its own bank accounts, books of account, and job sheet records. It filed its own New York City, New York State and Federal income, franchise, sales and miscellaneous tax returns. The clients of the corporation were generally not the same as the clients of the company. Petitioner's, Edward F. Howard's, activities on behalf of both the company and the corporation consisted of soliciting business, supervising the production of the booklets and generally satisfying the needs of the clients.

#### CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Edward F. Howard, during the years 1961, 1962, 1963 and 1964 as an officer of The Edward F. Howard Corporation were not so interrelated and integrated with his activities in connection with his unincorporated business

as to constitute part of a business regularly carried on by him and therefore the salary received by him as an officer of said corporation was 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, Edward F. Howard, during the years 1961, 1962, 1963 and 1964, did not constitute the carrying on of an unincorporated business and his income derived therefrom was not subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petitions of Edward F. Howard and Vyvyan Howard are granted and the notices of deficiency issued March 15, 1965 and March 28, 1966 are cancelled.

DATED: Albany, New York

*April 5, 1972.*

STATE TAX COMMISSION

*Norman Gallivan*  
COMMISSIONER

*Bruce Manley*  
COMMISSIONER

*Milton Korman*  
COMMISSIONER