

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD J. KINGSBERG

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) 1965 and 1966.

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 4th day of April , 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon  
Edwain Jedeikin, C.P.A.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
Edwain Jedeikin, C.P.A.  
wrapper addressed as follows: c/o Harry Goodkin & Co.  
115 Broadway  
New York, N.Y. 10006

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 Furman

Rae Zimmerman

STATE OF NEW YORK  
STATE TAX COMMISSION

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Tax Law for the (Year(s)) 1965 and 1966:

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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 4th day of April , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon  
Harold J. Kingsberg (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Harold J. Kingsberg  
47 East 88th 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

4th day of April , 1972.

Martha F. Mass

Rae Zimmerman

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of :

JAROLD J. KINGSBERG :

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) 1965 & 1966 :

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 4th day of April , 19 72, she served the within Notice of Decision (or Determination) by (certified) mail upon Charles S.P. Barker, Esq.(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Charles S.P. Barker, Esq.  
Reavis & McGrath  
1 Chase Manhattan Plaza  
New York, N.Y. 10005 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. Lewis

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  
**April 4, 1972**

**Harold J. Kingsberg**  
**47 East 88th Street**  
**New York, New York**

**Dear Mr. Kingsberg:**

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 S. 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	:	
HAROLD J. KINGSBERG	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1965 and 1966.	:	

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Petitioner, Harold J. Kingsberg, 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 1965 and 1966. (File No. 68043006). 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 10:45 A.M. Reavis and McGrath, Esqs. (Charles S. P. Barker, Esq., of Counsel) and Harry Goodkin & Co., C.P.A.'s by Edward Jedeikin, C.P.A. appeared for petitioner. Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel) appeared for the Income Tax Bureau.

ISSUES

I. Did petitioner, Harold Kingsberg's, activities as a security analyst on behalf of two individuals during the years 1965 and 1966 constitute the carrying on of an unincorporated business?

II. Did petitioner, Harold Kingsberg, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1965 and 1966?

FINDINGS OF FACT

1. Petitioner, Harold J. Kingsberg, and his wife filed New York State combined income tax returns for the years 1965 and 1966. He did not file New York State unincorporated business tax returns for said years.

2. On August 25, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Harold J. Kingsberg, imposing unincorporated business tax upon income received by him from his activities as a security analyst for two individuals during the years 1965 and 1966. It also imposed a penalty of \$158.71 for failure to file New York State 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 \$896.03.

3. During the years 1965 and 1966 petitioner, Harold J. Kingsberg, was employed as a security analyst by General American Investors, Co., Inc., a regulated investment company. He has been employed by said company from 1963 to the date of the formal hearing. He was a security analyst for Central National Corporation from 1954 to 1963. These were full time jobs consisting of interviewing the management of companies in which his employers owned stock or in which they were thinking of buying stock. He made substantial personal investments in the stock market as a result of the information obtained as a security analyst. These investments were made with the knowledge and consent of his employers.

4. In 1959, petitioner, Harold J. Kingsberg, entered into an arrangement with a Mr. Palitz to buy and sell securities for him under a limited power of attorney. In 1963 he entered into a

similar arrangement with a Mr. Simon who was a business associate of Mr. Palitz. Under the arrangement he purchased securities for their accounts at the same time he purchased securities for his own account. In general the same securities were purchased. His compensation from the two individuals was twenty percent of the profits made in each year without regard to dividends or interest. In the event of a loss in any year he would have to make up the loss before he earned any compensation for himself. He was paid on an annual basis. He had complete discretion with reference to the securities bought and sold. The arrangement between the parties was still in existence at the date of the formal hearing.

5. During the years in issue petitioner, Harold J. Kingsberg, purchased approximately 20 different stocks and sold approximately 20 different stocks each year on behalf of Mr. Palitz and Mr. Simon. He received compensation from them totaling \$12,800.00 in 1965 and \$19,588.56 in 1966.

6. During the years 1965 and 1966 petitioner, Harold J. Kingsberg, did not hold himself out to the public as a security analyst or investment advisor. He did not have a business office, business stationery or a business telephone. Requests were made of him from time to time to handle additional investment accounts, but he refused these offers.

7. Petitioner, Harold J. Kingsberg, was not aware at the time that he filed his personal income tax returns for the years 1965 and 1966 that he was also required to file unincorporated business tax returns reflecting the unincorporated business tax due on the net income received from Mr. Palitz and Mr. Simon during said years.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Harold J. Kingsberg, as a security analyst for Mr. Palitz and Mr. Simon during the years 1965 and 1966 were not transactions of an isolated or incidental nature but instead were transactions carried on with continuity, frequency and regularity and therefore said activities 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 and 20 NYCRR 281.2.

B. That petitioner, Harold J. Kingsberg, did not have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1965 and 1966, 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.

C. That the petition of Harold J. Kingsberg, is denied and the Notice of Deficiency issued August 25, 1969, is sustained.

DATED: Albany, New York

*April 4, 1972*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Richard Manley*  
\_\_\_\_\_  
COMMISSIONER

*William J. Green*  
\_\_\_\_\_  
COMMISSIONER