

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX ORDA

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) 1960, 1961, :
1962 and 1963.

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 1st day of August , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon MAX ORDA

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

Max Orda
84 Margaret Avenue
Lawrence, L.I., 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

1st day of August , 1972.

Martha Funes

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

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Taxes under Article(s) 23 of the
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of August , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon IRVING MOLDAUER, ESQ.
& ARNOLD OLSHIN, ESQ. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Irving Moldauer & Arnold Olshin, Esqs.
Moldauer & Katz
1501 Broadway
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,

1st day of August , 1972.

Maitha Furato

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX ORDA

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) 1960, 1961, :
1962 and 1963.

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 1st day of August , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon LOUIS WEISSMAN,
CPA (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Louis Weissman, CPA
2 Park Avenue
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

1st day of August , 1972.

Martha Furuta

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

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

ADDRESS YOUR REPLY TO

DATED: Albany, New York
August 1, 1972

Max Orda
84 Margaret Avenue
Lawrence, L.I., New York

Dear Mr. Orda:

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,

Solomon Sles
Solomon Sles

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MAX ORDA	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1960, 1961, 1962 and 1963.	:	

The petitioner, Max Orda, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1960, 1961, 1962 and 1963. A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on the seventh day of November, 1966. The petitioner appeared and was represented by Irving Moldauer, Esq. and Arnold Olshin, Esq., of the firm of Moldauer and Katz, Esqs.

ISSUE

Did the services which the petitioner performed for Orda Management Corporation constitute part of an unincorporated business regularly carried on by him?

FINDINGS OF FACT

1. The petitioner filed unincorporated business tax returns for the years 1960, 1961, 1962 and 1963 in which he reported net income from his real estate and real property management business. He also filed personal income tax returns for said years in which he reported salary income received from Orda Management Corporation and legal fees from his law practice.
2. On April 13, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Max Orda, imposing unincorporated business tax upon the salary received by him from Orda Management Corp. during the years 1960, 1961, 1962 and 1963 upon the grounds that the same was integrated with his business income and constituted a part thereof and accordingly issued a Notice of Deficiency in the amount of

\$2,538.32. The petitioner filed a timely petition for redetermination of said deficiency.

3. During the years in issue petitioner was a member of the Bar of the State of New York and engaged in the practice of law. He was also a real estate syndicator, organizing partnerships and corporations for the acquisition and investment of real estate located both within and without the State of New York. The petitioner also managed the real estate properties of the various partnerships in which he or his wife had an interest under the name of Orda Management Co. pursuant to written contracts.

4. Prior to November 1, 1956, the petitioner, d/b/a Orda Management Co. was designated the managing agent for the real estate partnerships and corporations mentioned in Finding #1 above. In November, 1956, the petitioner, his wife and brother-in-law formed a corporation known as Orda Management Corporation organized under the laws of the State of New York. The petitioner assigned to the corporation the agency contracts with respect to properties located within the State of New York and retained those contracts with respect to his individual management of properties located outside the State of New York.

5. The petitioner, as President of Orda Management Corporation during the years in issue, received a salary of approximately \$18,000.00 per year pursuant to resolution of the Board of Directors of said corporation. Federal and New York State income and social security taxes were withheld by the corporation from the compensation paid to him. Petitioner owned 54% of the shares of common stock in the corporation, the balance was owned by his wife and brother-in-law. The corporation owned a building located at 8 East 36th Street, New York City, and held a real estate broker's license. It also made investments in marketable securities. In addition to the

petitioner, the corporation had four other employees. The services of the petitioner consisted of supervising the employees and managing the financial affairs of the corporation.

6. The corporation maintained a suite of offices located at 225 Park Avenue, South, New York City. Petitioner maintained his office in the aforementioned suite of offices and paid rent and a portion of expenses to the corporation which reported the same as income. The corporation reported as an expense on its franchise tax returns the salary paid to the petitioner. The corporation maintained separate books and records independent of those of the petitioner.

7. The activities of the petitioner as managing agent consisted of renting space, preparing leases, arranging for and supervising repairs and engaging employees in connection with the maintenance and management of the properties of the various principals.

CONCLUSIONS OF LAW

A. The services rendered by the petitioner, Max Orda, during the years 1960, 1961, 1962 and 1963, as an officer of Orda Management Corporation, were not so integrated and interrelated with his activities in connection with his unincorporated business so as to constitute part of a business regularly carried on by him.

B. The salary received by the petitioner as an officer of Orda Management Corporation during the years in issue was exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

C. The aforesaid activities of the petitioner with respect to his salary income during the years in issue did not constitute the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law.

D. The petition of Max Orda is hereby granted and the Statement of Audit Changes and Notice of Deficiency dated April 13, 1965 be and the same are hereby cancelled.

DATED: Albany, New York

August 1, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Korman

COMMISSIONER