

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WEBER & COMPANY

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) 1964, 1965 & 1966

State of New York  
County of Albany

Martha Funaro , 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 9th day of May , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Weber & Company

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

Weber & Company  
66 W. 38 Street  
New York, New York 10018

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

9th day of May , 1972

W. Zimmerman

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WEBER & COMPANY

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) 1964, 1965 & 1966

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

State of New York  
County of Albany

Martha Funaro, 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 9th day of May, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Samuel Davidoff

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

Samuel Davidoff  
1 Nevins Street  
Brooklyn, New York 11217

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

9th day of May, 1972.

Paul Zimmerman

Martha Funaro



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

**May 9, 1972**

**Weber & Company**  
**66 W. 38 Street**  
**New York, New York 10018**

**Gentlemen:**

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,

*Nigel G. Wright*  
**Nigel G. Wright**  
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	:	
WEBER AND COMPANY	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1964, 1965 and 1966.	:	

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Weber and Company filed a petition under sections 722 and 689 of the Tax Law for a redetermination of a deficiency dated July 29, 1968, of unincorporated business taxes under Article 23 of the Tax Law for the years 1964, 1965 and 1966.

A hearing was held on August 10, 1971 at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Petitioner was represented by Samuel Davidoff, C.P.A. The Income Tax Bureau was represented by Edward H. Best, Esq. (Francis X. Boylan, Esq. of Counsel). The record of such hearing has been duly examined and considered.

#### ISSUES

The issues in this case relate to a claim for exclusion from unincorporated business tax under section 703(e) of the Tax Law with respect to the holding, leasing or managing of real property.

#### FINDINGS OF FACT

1. The petitioner, Weber and Company of 66 West 38th Street, New York City, is composed of Harry Weber and Alexander Weber as equal partners.

2. Rental income was received by the partnership. This rental income was derived from the short-term subleasing of subdivided and improved office space under long-term leases in office buildings in New York City. Weber has had these same long-term leases for close to twenty years and their tenants usually renew their leases. The buildings were located at 66 West 38th Street, 1407 Broadway, and 1369 Broadway. This rental income amounted to \$34,954.82, \$37,459.23 and \$32,825.00 in 1964, 1965 and 1966 respectively. Expenses of \$34,659.82, \$31,655.03 and \$29,210.13 are listed in petitioner's partnership return and all of these except a small amount are attributable to the rental income.

3. Harry Weber and Alexander Weber were each one-quarter shareholders in Cambridge Management Corporation which owned property at 799 Broadway, New York City. Fifty percent of the shares of Cambridge are owned by Norman F. Levey, who is also the president of Cross & Brown and who was not active in Cambridge. The Webers acted as managers of Cambridge.

4. Commission income was received by the Webers for services for Cambridge Management Corporation. They acted as building managers in dealing with tenants, collecting rents and the upkeep of, and repairs to the premises. Most of their time was spent on this and they received the amounts of \$9,545.00, \$6,313.25 and \$6,100.00 in the years 1964, 1965 and 1966 respectively for these services. In addition, in 1966 they received \$105.00 from tenants of Cambridge for services to the tenants in locating additional space and moving the tenants into such additional space.

5. Weber and Company received \$2,750.65, \$2,640.00 and \$2,600.00 in 1964, 1965 and 1966 respectively from Cambridge Management

Corporation as a reimbursement of the salary of a bookkeeper hired by Weber who spent about half his time on Cambridge business and who received a salary of about \$5,200.00 a year.

6. The Webers, as co-tenants, owned a building at 66 West 38th Street, and a half interest in a building at 31 Park Row.

7. As a result of a Federal audit, the income of the partnership was increased by \$3,797.50, of which \$500.00 was attributable to the disallowance of rental expenses, and \$3,297.50 was attributable to commissions received from Cambridge Management Corporation.

8. The deficiency amounts to \$681.75 with \$116.76 penalty for failure to file 1965 and 1966 returns, and \$94.79 interest, for a total of \$893.30.

#### CONCLUSIONS OF LAW

A. The petitioner's rental income is exempt from tax.

B. The commission income is subject to tax since it is for services performed for a corporation - a separate legal entity- and the ownership interest of the individual partners is therefore irrelevant (see in re Schirrmeister's Estate 8 AD 2d 180). The commissions received from tenants are subject to tax. Such income, considering also the Federal audit, is restated to be \$9,545.00, \$6,313.25 and \$9,502.50 for 1964, 1965 and 1966 respectively.

C. The amounts received for reimbursement for bookkeeping services are properly associated with the commission income and are taxable but are offset by the allowance of a deduction in like amount for the salary of the bookkeeper.

D. The petition is granted. The income for all years is too small to incur a tax. The penalties are cancelled. The deficiencies are cancelled.

DATED: Albany, New York  
*May 9, 1972*

STATE TAX COMMISSION

\_\_\_\_\_  
COMMISSIONER

*Bruce Manley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koeman*  
\_\_\_\_\_  
COMMISSIONER