

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY MARKO & SIDNEY TISH, d/b/a:  
MARKO BEER DISTRIBUTORS (dissolved)

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 5th day of September , 1973, she served the within  
Notice of Decision (or Determination) by (certified) mail upon HENRY MARKO &  
SIDNEY TISH, d/b/a MARKO BEER  
DISTRIBUTORS (dissolved)(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Henry Marko & Sidney Tish  
d/b/a Marko Beer Distributors  
c/o Henry Marko & Sidney Tish  
6 Knox Village  
Newburgh, New York 12550  
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 September , 1973

Jantha Spunaro

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

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Notice of Decision (or Determination) by (certified) mail upon LOUIS KATZMAN,  
ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Louis Katzman, Esq.

Barry & Katzman

15 Park Row

New York, New York 10038

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  
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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 September , 1973.

Martha J. Janss

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY and FAY MARKO

For a Redetermination of a Deficiency or  
a Refund of Personal Income  
Taxes under Article(s) 22 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 5th day of September, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon HENRY and FAY MARKO (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Henry Marko  
6 Knox Village  
Newburgh, New York 12550  
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 September, 1973.

Deborah Dunato

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY and FAY MARKO

For a Redetermination of a Deficiency or  
a Refund of Personal Income :  
Taxes under Article(s) 22 of the :  
Tax Law for the (Year(s) 1960, 1961, :  
1962 and 1963.

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State of New York  
County of Albany

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Notice of Decision (or Determination) by (certified) mail upon LOUIS KATZMAN,  
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Louis Katzman, Esq.  
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15 Park Row  
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known address of the (representative of the) petitioner.

Sworn to before me this

5th day of September , 1973.

Jantha Durazo

Lynn Wilson



STATE OF NEW YORK

DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
Mario A. Procaccino,  
~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
September 5, 1973

Henry Marko & Sidney Tish  
d/b/a Marko Beer Distributors  
c/o Henry Marko & Sidney Tish  
6 Knox Village  
Newburgh, New York 12550

Dear Mr. Marko and Mr. Tish:

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 deci-  
sion must be commenced within **4 months**  
from 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 relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

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457-2655, 6, 7

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STATE TAX COMMISSION

Mario A. Procaccino,

~~XXXXXXXXXXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
September 5, 1973

Mr. and Mrs. Henry Marko  
6 Knox Village  
Newburgh, New York 12550

Dear Mr. and Mrs. Marko:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **690** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from 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 relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
~~Law~~ Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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HENRY MARKO and SIDNEY TISH	:	
d/b/a MARKO BEER DISTRIBUTORS	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1960, 1961, 1962 and	:	
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In the Matter of the Petition	:	
of	:	
HENRY and FAY MARKO	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for	:	
the Years 1960, 1961, 1962 and 1963.	:	

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Petitioners, Henry Marko and Sidney Tish, d/b/a Marko Beer Distributors, (hereinafter known as Marko Beer Distributors) and Henry and Fay Marko petitioned for a redetermination of deficiencies in personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1960, 1961, 1962 and 1963.

A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 17, 1970, and concluded on May 4, 1971, before Lawrence A. Newman, Hearing Officer. The taxpayers were represented by Louis Katzman, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

ISSUES

I. Was there a correct finding of additional taxable net income subject to the unincorporated business tax in connection with the partnership of Marko Beer Distributors for the years 1960, 1961, 1962 and 1963 based upon an audit?

II. Is petitioner, Henry Marko, subject individually to additional personal income tax as a result of a finding of additional distributive income from the partnership of Marko Beer Distributors?

FINDINGS OF FACT

1. Petitioner, Marko Beer Distributors, timely filed New York State unincorporated business tax returns for the years 1960, 1961 and 1962. Marko Beer Distributors failed to timely file an unincorporated business tax return for 1963.

2. Petitioners, Henry and Fay Marko, timely filed New York State personal income tax returns for the years 1960, 1961, 1962 and 1963.

3. Consents Fixing Period of Limitation (IT-75) for the years 1960, 1961 and 1962, were executed on behalf of the partnership extending the period for assessment to April 15, 1967.

4. Notices of deficiency for personal income and unincorporated business taxes for the years 1960, 1961, 1962 and 1963 were issued on April 10, 1967, against the taxpayers under File No. 2841.



5. The petitioners timely petitioned for redetermination of the deficiencies.

6. An audit was completed based upon available records. Among these records audited were the accounts of Sidney Tish at the Royal State Bank (1960-1963), Sidney Tish and Henry Marko at the Hyland National Bank (1960-1963), Henry Marko at the Royal State Bank (1960-1962), Henry Marko at the Franklin National Bank (1960-1963), Fay Marko at the Greater New York Savings Bank (1960-1962) and Fay and Marlene Marko at the Greater New York Savings Bank (1960-1963).

All the deposits in all the banks were added up. The petitioners were then given credit for loans, redeposits, credit memos and actual "kiting". Kiting, as used here, is the process by which a person can create false funds by depositing a check from bank A, where he has insufficient funds to back it, to bank B. He then deposits a check from bank B in his bank A account before the original check from bank A has cleared back to bank A.

7. Petitioners failed to sustain the burden of proof that the unexplained deposits charged to their partnership income for 1960 through 1963 were caused by "kiting" of checks, loans obtained or any other source except partnership income from business operations. They did not submit any documentary or other sufficient evidence to support their claimed deductions for travel expenses, gas, oil and storage expenses, petty cash charged as miscellaneous expenses or depreciation and repairs of their personal cars as a business expense for the years 1960,

1961, 1962 and 1963.

8. Petitioners failed to establish any basis for deducting rental expenses on a building the partnership owned for 1961, 1962 and 1963.

9. Petitioners failed to sustain the burden of proof that the profit from the sale of their Albany branch was not unrecorded partnership income and that unreported interest should not be added for the year 1962.

10. Petitioners improperly deducted a capital improvement to their warehouse for 1962. The depreciation on the capital improvement is properly deducted for 1962 and 1963 and has been allowed upon audit. They did not account for the difference in profit and loss statements furnished to a bank and profits shown on their returns for 1961 and 1963. Nor did they substantiate that a check made out to cash actually was for truck expense in 1963.

CONCLUSIONS OF LAW

A. The negligence penalty, pursuant to the Tax Law, is sustained.

B. The petition is denied as to each and every item equaling the additional net taxable income upon which the Notice of Deficiency is based.

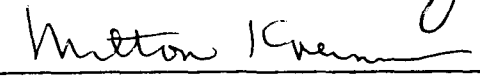
C. Interest shall be added to the total amount due pursuant to the Tax Law.

DATED: Albany, New York  
September 5, 1973

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER