

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RUSSELL E. CHERNE

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 ~~(x)~~ 1970. :

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 21st day of June , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Russell E.
Cherne (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Russell E. Cherne

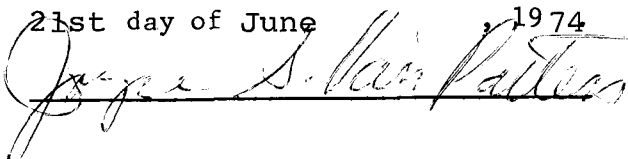
29260 Points - 0 - Woods Place
Southfield, Michigan 48706


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

21st day of June , 1974


James S. Van Patten


Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUSSELL E. CHERNE

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article ~~(8)~~ 23 of the
Tax Law for the Year ~~(8)~~ 1970 :

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 21st day of June , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Lawrence Sklar,
C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Lawrence Sklar, C.P.A.
% Sosin, Sklar, Wolff
12701 W. Ten Mile Road

Oak Park, Michigan
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

21st day of June , 1974

[Signature]

[Signature: Martha Funaro]



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
Mario A. Procaccino
~~XXXXXXXXXXXX~~, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
June 21, 1974

Mr. Russell E. Cherne
29260 Points - 0 - Woods Place
Southfield, Michigan 48706

Dear Mr. Cherne:

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

Please take further notice that pursuant to **section 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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RUSSELL E. CHERNE	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1970.	:	

Petitioner, Russell E. Cherne, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1970. (File No. 0-54827701). A calendar call was scheduled at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, for November 29, 1973, at 9:30 A.M. On November 1, 1973, petitioner, Russell E. Cherne, waived a formal hearing and requested that the State Tax Commission decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Were the services rendered by petitioner, Russell E. Cherne, during the year 1970, as an employee of Arlan's Department Stores, Inc., so interrelated and integrated with his activities in connection with his unincorporated business as a real estate broker and developer as to constitute part of a business regularly carried on by him?

FINDINGS OF FACT

1. Petitioner, Russell E. Cherne, did not file a New York State unincorporated business tax return for the year 1970. He did, however, file a New York State income tax resident return for said year.

2. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Russell E. Cherne, imposing an additional assessment to personal income in the amount of \$82.25, not here in dispute, and imposing unincorporated business tax on petitioner's real estate and development activities and upon the salary received from Arlan's Department Stores, Inc. The adjustment was imposed upon the grounds that the salary constituted business income subject to unincorporated business tax pursuant to Article 23 of the Tax Law. In accordance with the Statement of Audit Changes, it issued a Notice of Deficiency in the amount of \$1,480.50.

3. During the year 1970, petitioner, Russell E. Cherne, conducted a sole proprietorship engaged in the real estate and development field.

4. That petitioner, Russell E. Cherne, conceded unincorporated business tax liability on earnings of his unincorporated business as a real estate broker and developer plus any penalties rightfully due and owing.

5. During the year 1970, petitioner, Russell E. Cherne, was also the employee of Arlan's Department Stores, Inc. in the capacity of Assistant Real Estate Director. Federal income tax, State income tax, City income tax and social security tax was withheld

from his salary. He did not receive commissions. His activities at Arlan's Department Stores, Inc. included travel to proposed building sites, visiting construction sites and buildings about to be opened by Arlan's. He negotiated lease terms, worked on construction specifications, maintained work schedules and any and all details connected with the opening of a new store. The company paid his expenses in connection with said travel.

6. During the year 1970, petitioner, Russell E. Cherne, was involved in various business activities associated with real estate brokers, promoters and developers. He maintained an office in his home. He incurred certain expenses in connection with his sole proprietorship activities.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Russell E. Cherne, during the year 1970 as an employee of Arlan's Department Stores, Inc., were not so integrated and interrelated with his activities in connection with his unincorporated business as a real estate broker and developer, as to constitute part of a business regularly carried on by him and, therefore, the salary received by him for services as an employee of Arlan's Department Stores, Inc. 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, Russell E. Cherne, in relation to his employment with Arlan's Department Stores, Inc., during the year 1970 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 petition is granted with respect to the Notice of Deficiency issued February 26, 1973, with respect to the salary income received from Arlan's Department Stores, Inc. by petitioner, Russell E. Cherne, which was included in the computation of the unincorporated business tax.

D. The Income Tax Bureau is hereby ordered to accordingly modify the Notice of Deficiency issued February 26, 1973, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
June 21, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER