

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD & SYLVIA MALSKY

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) 1963, 1964, :
& 1965.

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 13th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Harold and Sylvia
Malsky (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. & Mrs. Harold Malsky
123 Shepard Lane
Roslyn Heights, 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

13th day of February, 1974.

James S. Van Patten
Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Samuel Speyer,
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:

Samuel Speyer, C.P.A.
22 East 40th Street
New York, New York 10016

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

13th day of February, 1974

Joyce S. Law Katten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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of

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Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1963, 1964, :
1965

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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 13th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Joseph Calderon,

Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

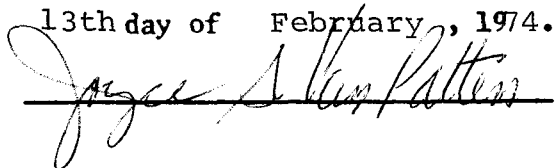
Joseph Calderon, Esq.
Linden & Deutsch
110 East 59th Street
New York, New York 10022

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

13th day of February, 1974.


James A. Van Patten


Martha Funaro

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OF NOTICE OF DECISION
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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 13th day of February, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Elliot S. Shaw,
Esq. (representative of) the petitioner in the within

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

Elliot S. Shaw
Linden and Deutsch
110 East 59th Street
New York, New York 10022

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

13th day of February, 1974.

Joyce Shaw Katten

Martha Funaro



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

~~NORMAN A. GALEMAN~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
February 13, 1974

Mr. & Mrs. Harold Malsky
123 Shepard Lane
Roslyn Heights, L.I., New York

Dear Mr. & Mrs. Malsky:

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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
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HAROLD and SYLVIA MALSKY	:	DECISION
	:	
for a Redetermination of a Deficiency or:	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1963, 1964 and 1965.	:	
	:	
	:	

Harold and Sylvia Malsky, filed a petition under sections 689 and 722 of the Tax Law for the redetermination of deficiency issued under date of March 11, 1968, in the amount of \$1,041.87, plus interest of \$169.64, for a total of \$1,211.51 in unincorporated business taxes under Article 23 of the Tax Law for the years 1963, 1964 and 1965.

A hearing was duly held on January 9, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioners were represented by Samuel Speyer, C.P.A. with Joseph Calderon, Esq., and Elliot S. Shaw, Esq., of Linden & Leutsch appearing on the brief. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq.

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the petitioners are conducting an unincorporated business.

FINDINGS OF FACT

1. Petitioners are residents of Roslyn Heights, Queens County. They did not file a return for unincorporated business tax.

2. Mr. Malsky, one of the petitioners, receives his sole income in the form of salary from each of five corporations. These corporations each own at least one small apartment house for from fifteen to sixty families in a working class neighborhood. The apartments are in Jackson Heights, Queens, Astoria, Queens, and in the Bronx. Each building employs one janitor. Mr. Malsky and his wife are the sole stockholders in these corporations. Mr. Malsky is the president of each. The salary paid by each corporation is in fixed periodic amounts from which Federal income tax and social security is withheld.

3. Mr. Malsky operated out of his home through 1963. In 1964 he rented an office in Astoria, Queens, in the name of one of the corporations, Esro Realty Corp. This was not in any building owned either by him or by one of the six corporations. This office was used for the business of all the corporations.

4. Mr. Malsky was an attorney and a licensed real estate broker but did not hold himself out to the general public in either of these or in any other capacity.

5. The services Mr. Malsky performed included title closings, mortgage financing, dispossess proceedings, as well as rent collection and repair of the property.

6. The reason for the separate real estate corporations is stated to be to limit legal liability for the protection of the owners and the mortgagees.

7. Sylvia Malsky is not involved with her husband in the services he performs for the corporations.

CONCLUSIONS OF LAW

Petitioners are not taxable. Mr. Malsky is a legitimate employee of the several corporations and is not holding himself out as a building manager.

DATED: Albany, New York
February 13, 1974

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER

COMMISSIONER