

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID CHERR ASSOCIATES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business Taxes :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) or ~~Period(s)~~ 1966 :  
1967 and 1968

State of New York  
County of

MARYLOU SAMUELS, 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 19th day of November, 1976, she served the within  
Notice of Decision by (certified) mail upon DAVID CHERR  
ASSOCIATES (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: David Cherr Associates  
250 West 57th Street  
New York, New York 10019  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative~~  
~~of the)~~ 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

19th day of November, 1976

Marylou Samuels

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
DAVID CHERR ASSOCIATES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business Taxes :  
Taxes under Article(s) <sup>23</sup> of the :  
Tax Law for the Year(s) or Period(s) :  
1966, 1967 and 1968

State of New York  
County of

MARYLOU SAMUELS, 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 19th day of November, 1976, she served the within  
NOTICE OF DECISION by (certified) mail upon Herbert Cohen  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Herbert Cohen, CPA  
214 Berger Street  
Somerset, New Jersey 08873  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
of the) 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

19th day of November, 1976.

Marylou Samuels



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

November 19, 1976

TELEPHONE: (518) **457-3850**

David Cherr Associates  
250 West 57th Street  
New York, New York 10019

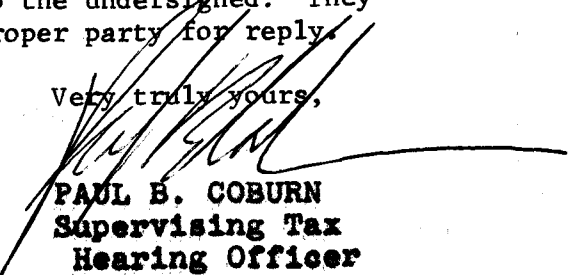
Gentlemen:

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 deci-  
sion must be commenced within **4 months**  
from the date of this notice.

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. They  
will be referred to the proper party for reply.

Very truly yours,

  
**PAUL B. COBURN**  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
DAVID CHERR ASSOCIATES : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Taxes under Article 23 of the Tax Law :  
for the Years 1966, 1967 and 1968. :  

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Petitioner, David Cherr Associates, of 250 West 57th Street, New York, New York 10019, has filed petitions for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1966, 1967 and 1968. (File No. 01142) A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on May 18, 1976 at 2:45 p.m. Petitioner appeared by Herbert Cohen, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

#### ISSUE

Whether the claimed office in the home of the nonresident partner is a bona fide out-of-state regular place of business of the partnership, thereby entitling the entity to an allocation of the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, David Cherr Associates, timely filed New York partnership income and unincorporated business tax returns for 1966, 1967 and 1968, attaching schedules of allocation for New York State and out-of-state income.

2. A Notice of Deficiency for unincorporated business tax due was issued on April 13, 1970 for the years 1966 and 1967 setting forth a tax due of \$1,895.21 plus interest of \$285.11 for a total due of \$2,180.32. A similar Notice of Deficiency for unincorporated business tax for 1968 was issued on April 10, 1972, showing tax owing in the amount of \$1,677.10 plus interest of \$300.65 for a total of \$1,977.75 due for that year.

3. The Income Tax Bureau determined that the office claimed in the New Jersey home of one of the two partners was not a bona fide office of the partnership. Therefore, allocation of business income was not permitted and the total partnership income was held subject to New York State unincorporated business tax.

4. Petitioner, David Cherr Associates, timely filed petitions for redetermination of unincorporated business tax for 1966, 1967 and 1968.

5. The partnership, David Cherr Associates, consisted of David Cherr, residing in New York City and doing business out of

a mid-town Manhattan office and Henry J. Puzo, who resided in Teaneck, New Jersey. Mr. Puzo was primarily engaged in outside selling in New Jersey and Connecticut. The firm was in the metal business, selling aluminum, brass, porcelain and enamel, as well as glass back splashes and other parts for stoves. From blueprints supplied by potential customers, the selling partners would work up a cost estimate for each custom job, then quote prices to their prospects, and if successful in getting the order, would place the order with a fabricator. That manufacturer would ship directly to the customer the material ordered through petitioner, David Cherr Associates, who kept no inventory.

6. Mr. Puzo kept samples, orders and other correspondence in an office he maintained in his one-family residence in Teaneck, New Jersey. These samples were heavy and sometimes bulky metal extrusions. Four days a week, Mr. Puzo loaded his samples, order books and other selling paraphernalia into his automobile and proceeded from his home directly to prospective customers. Most of these were in New Jersey, but some were in Connecticut and Pennsylvania. One day per week, Mr. Puzo came to the New York office of the partnership where he conferred with David Cherr on the conduct of partnership business.

7. All orders were sent through the New York office, although Mr. Puzo had his home address on some partnership letterheads. In 1967 and 1968, the partnership maintained a telephone at the Puzo address in the names of both petitioners, David Cherr and Henry J. Puzo.

8. There was no evidence as to whether unincorporated business tax returns were filed in New Jersey for any of the years 1966 through 1968. On the Federal informational partnership returns (Form 1065), the petitioner, David Cherr, reported paying New York City and New York State unincorporated business taxes. Since petitioner was evidently aware of unincorporated business tax liability in New York City and State, and since he had a Certified Public Accountant who was undoubtedly aware of the applicability of the New Jersey tax laws relating to unincorporated business conducted in that state, it may be assumed that petitioner did not deem his business activities to be taxable in New Jersey.

9. The record contains no evidence as to the sources and amounts of sales income other than the conclusory and unsubstantiated figures on tax returns, and on one worksheet made by an accountant not available for oral examination.

CONCLUSIONS OF LAW

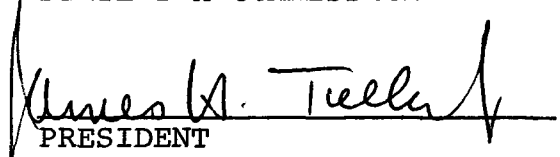
A. That the petitioner, David Cherr Associates, failed to meet the burden of proof that he was entitled to allocation of the income of his unincorporated business because he had a regular place of business without the State which was "...systematically and regularly used by the unincorporated business entity (sic) in carrying on its business." Giordano v. State Tax Commission, 52 A.D.2d 691 (2nd Dept. 1976) citing McMahan v. State Tax Commission, 45 A.D.2d 624, 627, 360 N.Y.S. 2d 495, 498 motion for leave to appeal denied 36 N.Y. 2d 46.

B. That the petitions are in all respects denied. The notices of deficiency dated April 13, 1970 and April 10, 1972 are sustained.

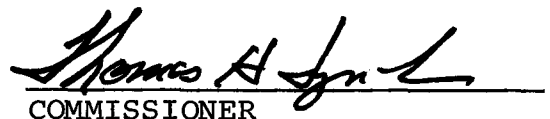
C. That pursuant to the Tax Law, interest shall be added to the tax due until paid.

DATED: Albany, New York  
November 19, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER