

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

J. R. ELYACHAR and JEAN ELYACHAR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (x) 23 of the :
Tax Law for the Year(s) ~~xx~~ ~~Period(s)~~ 1963, :
1964, 1965, 1966, 1967, 1968 and 1971.

State of New York
County of Albany

Catherine Steele, 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 10th day of September, 1976, she served the within Notice of Decision by (certified) mail upon J. R. Elyachar and Jean Elyachar ~~(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. J. R. Elyachar
Ruradam Farms
Buckout Road
White Plains, New York 10604
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)~~ ~~xx~~ ~~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

10th day of September, 1976.

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
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Catherine Steele, 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 10th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Peter Zelmanow, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Peter Zelmanow, Esq.
Louis Sternbach & Company
6 East 43rd Street
New York, New York 10017
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

10th day of September, 1976.

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

September 10, 1976

TELEPHONE: (518) **457-3830**

Mr. & Mrs. J. R. Elyachar
Kuradam Farms
Buckout Road
White Plains, New York 10604

Dear Mr. & Mrs. Elyachar:

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

Please take further notice that pursuant to
Section(2) **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 S. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

J. R. ELYACHAR and JEAN ELYACHAR

for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1963,
1964, 1965, 1966, 1967, 1968 and 1971

DECISION

Petitioners, J. R. Elyachar and Jean Elyachar, residing at Ruradam Farms, Buckout Road, White Plains, New York 10604, have filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963, 1964, 1965, 1966, 1967, 1968 and 1971. (File No. 01080). A formal hearing was held before Julius E. Braun, Esq., Hearing Officer, at the Offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 5, 1976, at 1:15 p.m. Petitioners appeared by Peter Zelmanow, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUES

I. Whether the activities of petitioner, J. R. Elyachar, in managing real estate during the years in issue constituted the carrying on of an unincorporated business.

II. Whether petitioners, J. R. Elyachar and Jean Elachar, had reasonable cause for failing to file unincorporated business tax returns for the years in issue.

FINDINGS OF FACT

1. Petitioners, J. R. Elyachar and Jean Elyachar, filed New York State income tax returns for the years 1963, 1964, 1965, 1966, 1967, 1968 and 1971. They did not file New York State unincorporated business tax returns for said years.

2. On April 13, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, J. R. Elyachar, imposing unincorporated business tax upon his income derived from his activities managing real estate for the years 1963, 1964 and 1965, and accordingly issued a Notice of Deficiency in the sum of \$5,352.67 plus penalty and interest of \$2,890.52 for a total of \$8,243.19. On April 13, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner J. R. Elyachar, imposing unincorporated business tax upon his income derived from his activities managing real estate for the years 1966, 1967 and 1968 and accordingly issued a Notice of Deficiency in the sum of \$7,878.78 plus penalty and interest of \$2,841.89 for a total of \$10,720.67. On December 28, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, J. R. Elyachar and Jean Elyachar, imposing unincorporated business tax upon their business activities for the year 1971 and accordingly issued a Notice of Deficiency in the sum of \$4,780.99 plus penalty and interest of \$2,066.50 for a total of \$6,846.99.

3. During the years 1963, 1964, 1965, 1966, 1967, 1968 and 1971, petitioner, J. R. Elyachar, managed real properties which were originally acquired and built in his individual capacity. The financing needs were arranged by and negotiated by him. He subsequently turned over title to all his properties to

various corporations and thereupon he assumed and performed all the duties and the responsibilities of managing the properties including renting, lease negotiations, and settling tenant complaints. He received a nominal salary and a management fee from each corporation which was in accord with the schedule of the Real Estate Board of New York. He performed many chores and made repairs without recompense. He owned all the stock of all of the corporations save one of the smaller ones which his daughter owned. He devoted all of his time to managing the real property of these corporations.

4. During preceding years, 1959 through 1961, petitioner, J. R. Elyachar, filed unincorporated business tax returns for his activities in managing real estate.

CONCLUSIONS OF LAW

A. That the income received by petitioner, J. R. Elyachar from his real estate corporations constituted income from his regular business as a real estate manager and not compensation as an employee or fiduciary 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 income received by petitioner, J. R. Elyachar, during the years 1963, 1964, 1965, 1966, 1967, 1968 and 1971 for the management of the real estate interests of the corporation in which he was a stockholder constituted receipts from his regular business of real estate management and not income received as an owner, lessee or fiduciary of real estate as he was not the owner, lessee or fiduciary of the corporate properties in accordance with the meaning and intent of section 703(e) of the Tax Law.-

C. That the aforesaid activities of the petitioner, J. R. Elyachar, during the years 1963, 1964, 1965, 1966, 1967, 1968 and 1971 constituted the

carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

D. That the failure of petitioners, J. R. Elyachar and Jean Elyachar to file unincorporated business tax returns for the years 1963, 1964, 1965, 1966, 1967, 1968 and 1971 and to pay said tax for the year 1971 was not for reasonable cause in accordance with the meaning and intent of former section 685(a) and sections 685(a)(1) and 685(a)(2) of the Tax Law inasmuch as unincorporated business tax returns were filed for previous years for the similar activities.

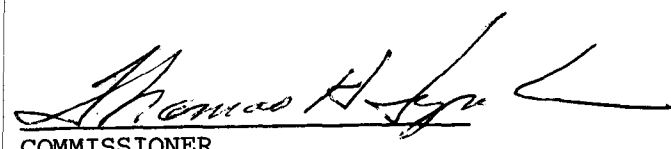
E. That the petitions of J. R. Elyachar and Jean Elyachar are denied and the Notices of Deficiency issued April 13, 1970 and the Notice of Deficiency issued December 28, 1973 are sustained.

DATED: Albany, New York
September 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER