

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY FORSTER

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) 1964
through 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 22nd day of November, 1976, she served the within
Notice of Decision by (certified) mail upon Henry Forster

(~~representative of~~) the petitioner in the within proceeding,

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

Mr. Henry Forster
169 E. 78th Street
New York, New York 10021

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

22nd day of November, 1976.

Marylou Samuels

Janet Nash



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

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

November 22, 1976

Mr. Henry Forster
169 E. 78th Street
New York, New York 10021

Dear Mr. Forster:

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

In the Matter of the Petition :
of :
HENRY FORSTER : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business Taxes :
under Article 23 of the Tax Law for the :
Years 1964 through 1968. :
:

Petitioner, Henry Forster, residing at 169 East 78th Street, New York, New York 10021, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1964 through 1968. (File No. 00540).

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 June 8, 1976 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether, petitioner, Henry Forster's activities as a real estate broker and consultant during the years 1964 through 1968 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Henry Forster, and his wife, filed New York State combined income tax returns for the years 1964 through 1968. Petitioner failed to file unincorporated business tax returns for said years.

2. On January 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Henry Forster, for unincorporated business tax due for the years 1964 through 1968. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency of \$3,240.94, plus interest of \$1,214.02, for a sum total of \$4,454.96.

3. Petitioner, Henry Forster, a real estate broker and consultant, has been engaged in real estate management and development for many years. From 1964 through March 1967, he worked as a trustee for First National Real Estate Trust. He inspected property offered to the trust by numerous real estate brokers. The amount of fees paid to him was based upon a percentage of the assets of the trust. Petitioner had regular daily working hours, from 9:00 A.M. to 5:00 P.M. First National provided petitioner with an office and a secretary. Petitioner traveled to approximately twenty-five cities during his association with said trust, with First National providing reimbursement for all expenses incurred. No taxes were withheld from his fees and petitioner did not know whether social security or unemployment insurance were withheld from his remuneration. First National exerted insubstantial control over petitioner's daily activities, giving no specific instructions concerning the performance of his duties.

4. During the period, petitioner, Henry Forster, worked for First National Trust he also performed services as a real estate broker and consultant for several clients he had worked for previously as well as two other firms, Beauvais Realty Co., and Valeroy Real Estate Co., Inc.

5. After petitioner, Henry Forster's affiliation with First National Trust terminated in March 1967, he entered into an arrangement with William A. White and Sons, converting apartment houses into cooperatives. Petitioner was paid solely on a commission basis and no taxes were withheld from said commissions. During the remaining period in issue, petitioner continued to significantly augment his income by working as a real estate broker and consultant for other clients.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Henry Forster, during the years 1964 through 1968, constituted receipts from his regular business as a real estate broker and consultant and not compensation as an employer 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 aforesaid activities of petitioner, Henry Forster, during the years 1964 through 1968, constituted the carrying on of an unincorporated business, and income therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

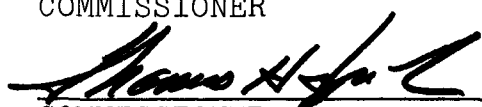
C. That the petition of Henry Forster is denied and the Notice of Deficiency issued January 29, 1973 is sustained.

DATED: Albany, New York
November 22, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER