

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
E. EDWARD HERMAN and  
CAROL S. HERMAN

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 ~~(x)~~ 23 of the  
Tax Law for the Year(s) 1968, 1969, :  
1970 and 1971.

State of New York  
County of Albany

Donna Scranton , 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 May , 1976 , she served the within  
Notice of Decision (~~on Determination~~) by (certified) mail upon E. Edward and  
Carol S. Herman (~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. and Mrs. E. Edward Herman  
100 Worth Avenue  
Palm Beach, Florida

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~~)  
~~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 May , 1976.

Janet Mack

Donna Scranton

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
E. EDWARD HERMAN and  
CAROL S. HERMAN

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 (B) 23 of the  
Tax Law for the Year(s) 1968, 1969,  
1970 and 1971.

State of New York  
County of Albany

Donna Scranton, 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 May, 1976, she served the within  
Notice of Decision (~~or Determination~~) by (certified) mail upon Saul S.

Davis, Esq. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Saul S. Davis, Esq.  
Davis & Davis, Esqs.  
1440 Broadway  
New York, 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 May, 1976.

Janet Mack

Donna Scranton



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT,

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

(518) 457-3850

**DATED:** Albany, New York  
May 13, 1976

Mr. and Mrs. E. Edward Herman  
100 Worth Avenue  
Palm Beach, Florida

Dear Mr. and Mrs. Herman:

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

Please take further notice that pursuant to  
Section (~~xx~~ **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,

  
**PAUL S. COBURN**  
**SUPERVISING TAX**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
E. EDWARD HERMAN and	:	
CAROL S. HERMAN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968, 1969, 1970 and 1971.	:	

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Petitioners, E. Edward Herman and Carol S. Herman, 100 Worth Avenue, Palm Beach, Florida, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969, 1970 and 1971. (File No. 1-84380889.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 22, 1975, at 2:45 p.m. Petitioner appeared by Davis & Davis, Esqs., (Saul S. Davis, Esq. of counsel). The Income Tax Bureau appeared by Peter Crotty, Jr., Esq., (James Scott, Esq. of counsel).

ISSUES

I. Did petitioner, E. Edward Herman's activities as a financial advisor and consultant during the years 1968, 1969, 1970 and 1971 constitute the practice of a profession?

II. If petitioner, E. Edward Herman, was carrying on an unincorporated business during the years 1968, 1969, 1970 and 1971, what portion of the income derived therefrom should be allocated to New York State?

III. Did petitioner, E. Edward Herman, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1968, 1969, 1970 and 1971?

FINDINGS OF FACT

1. Petitioner, E. Edward Herman, and his wife, filed New York State income tax resident returns for the years 1968, 1969, 1970 and 1971. He listed his occupation as that of a sales representative on said returns. He did not file New York State unincorporated business tax returns for said years.

2. On November 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, E. Edward Herman, and his wife, imposing unincorporated business tax in the sum of \$5,963.70 upon his activities as a sales representative during the years 1968, 1969, 1970 and 1971. It also imposed penalties pursuant to former section 685(a) of the Tax Law and sections 685(a)(1) and 685(a)(2) of the Tax Law in the total sum of \$2,104.34. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$9,204.65.

3. It was stipulated at the formal hearing that petitioner, Carol S. Herman, was not engaged in an unincorporated business during the years 1968, 1969, 1970 and 1971.

4. Petitioner, E. Edward Herman, studied finance at the Wharton School of Business. He studied liberal arts for one and one-half years at the University of Paris. He has never received any formal college degrees. He has been a management and financial consultant and an international trouble shooter for various business enterprises from 1946 until the present time.

5. During the years 1968, 1969, 1970 and 1971, petitioner, E. Edward Herman's income as a financial advisor and consultant was derived solely from personal services rendered. Capital was not a material income producing factor.

6. During the years 1968, 1969, 1970 and 1971 petitioner, E. Edward Herman, was a financial advisor and consultant to foreign firms conducting business in Latin America. The nature of petitioner's work required that he travel to London, where a number of his principals had offices and to Latin America, which was the site of the construction projects and the offices of some of his clients. At both places petitioner was given an office in which to work by his clients. Petitioner, E. Edward Herman, spent approximately four months of each of the years in issue out of New York State. He used his home as an office when he was in New York.

CONCLUSIONS OF LAW

A. That the activities of petitioner, E. Edward Herman, as a financial advisor and consultant during the years 1968, 1969, 1970 and 1971, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That petitioner, E. Edward Herman, did not have a regular place of business outside of New York State during the years 1968, 1969, 1970 and 1971 and, therefore, all of his business income derived from his activities as a financial advisor and consultant, including the income derived from his out-of-state activities, was properly allocated to New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

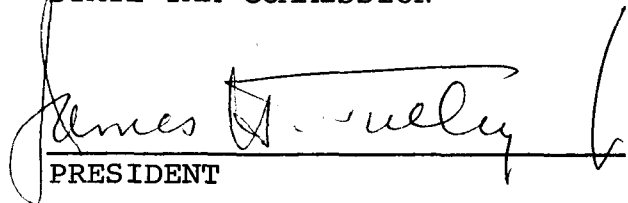
C. That petitioner, E. Edward Herman, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1968, 1969, 1970 and 1971, and therefore, the penalties assessed pursuant to former section 685(a) and sections 685(a)(1) and 685(a)(2) of the Tax Law are waived.

D. That the petition of E. Edward Herman and Carol S. Herman is granted to the extent of cancelling the Notice of Deficiency issued November 26, 1973, as against petitioner, Carol S. Herman; and of cancelling the penalties imposed pursuant to

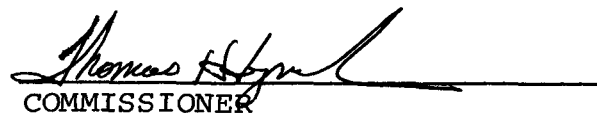
former section 685(a) and sections 685(a)(1) and 685 (a)(2) of the Tax Law for the years 1968, 1969, 1970 and 1971, as against petitioner, E. Edward Herman; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued November 26, 1973; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
May 13, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER