

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD LEVY and LILLIAN LEVY

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(s) 23 of the :
Tax Law for the Year(s) 1960, 1961, :
1962, 1963, 1964 and 1965

State of New York
County of Albany

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 11th day of June, 1976, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Harold Levy and
Lillian Levy ~~(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. Harold Levy
887 Fifth Avenue
Brooklyn, New York 11200
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

11th day of June, 1976.

Janet Mack

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

June 11, 1976

TELEPHONE: (516) **457-3850**

Mr. and Mrs. Harold Levy
887 Fifth Avenue
Brooklyn, New York 11200

Dear Mr. and Mrs. Levy:

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

Please take further notice that pursuant to
Section ~~722~~ **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **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: ~~xxxxxx~~ Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
HAROLD LEVY and LILLIAN LEVY
for Redetermination of a Deficiency or
for Refund of Unincorporated Business
Tax under Article 23 of the Tax Law for
the Years 1960, 1961, 1962, 1963, 1964
and 1965.

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DECISION

Petitioner, Lillian Levy, has filed a petition for redetermination of deficiency in the payment of unincorporated business tax for the years 1960 to 1964 inclusive and petitioners, Harold Levy and Lillian Levy, have filed a petition for redetermination of deficiency in the payment of unincorporated business tax for the year 1965.

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on June 18, 1973, at 1:30 p.m.

Petitioner, Lillian Levy, appeared in person. Petitioner, Harold Levy, did not appear. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Whether compensation received by petitioner, Lillian Levy, for brokerage services rendered in connection with the purchase and sale of real estate is subject to the unincorporated business tax and, if so, the amount thereof.

FINDINGS OF FACT

1. The petitioners, Harold and Lillian Levy, filed joint Federal and New York State income tax returns as husband and wife for the years 1960 to 1965 inclusive.

2. Schedule C-3 of each of said Federal income tax returns for the years 1960 to 1965 inclusive reported as the "Name of Self-Employed Person" the petitioner, Lillian Levy, and further reported on lines 6 thereof "Total net earnings --- from self-employment ---" of \$4,800 for each of said years as to the petitioner, Lillian Levy, and on lines 11 thereof "Self-employment tax" with respect to said petitioner, Lillian Levy, of \$216 as to each of the years 1960 and 1961, \$225.60 as to the year 1962 and \$259.20 as to each of the years 1963, 1964 and 1965.

3. The New York State combined income tax returns of the petitioners for the years 1960 to 1965 inclusive reported that the petitioner, Lillian Levy, had "Profit--from Business, profession or Farmer" for the years 1960 and 1961 and "Business Income" for the years 1962 to 1965 inclusive as follows:

1960 -	\$14,328.23
1961 -	14,946.49
1962 -	9,428.36
1963 -	13,735.57
1964 -	15,704.08
1965 -	15,272.64

4. On May 26, 1969, the Department of Taxation and Finance addressed a Notice of Deficiency to the petitioner, Lillian Levy, advising her that the determination of her personal and/or unincorporated business tax liability shows deficiencies for the following years in the following amounts plus penalty and interest thereon:

1960 -	\$258.50
1961 -	278.29
1962 -	3.42
1963 -	239.54
1964 -	302.53

5. The total amount of the claimed deficiencies for the years 1960 to 1964 as aforesaid is the sum of \$1,082.28 together with penalties and interest thereon.

6. On May 26, 1969, the Department of Taxation and Finance addressed a Notice of Deficiency to the petitioners, Harold Levy and Lillian Levy, advising them that the determination of their personal and/or unincorporated business tax liability shows a deficiency for the year 1965 of \$19.22 together with penalty and interest thereon.

7. The petition of Lillian Levy, dated August 22, 1969, for the redetermination of the aforesaid deficiency of \$1,082.28 plus penalty and interest thereon, alleges as the ground for redetermination that the "Taxpayer was not engaged in an activity subject to the unincorporated business tax."

8. Similarly, the petition of Harold Levy and Lillian Levy, dated August 22, 1969, for the redetermination of the aforesaid deficiency of \$19.22 plus penalty and interest thereon alleges as the ground for redetermination that the "Taxpayers were not engaged in an activity subject to the unincorporated business tax."

9. The petitioner, Harold Levy, did not appear at the hearing herein, held on June 18, 1973, for the reason that he was then hospitalized and, accordingly, the said hearing was adjourned as to the petitioner, Harold Levy, and this proceeding was thereupon severed and continued as a separate proceeding as to the petitioner, Lillian Levy.

10. During the years 1960 to 1965 inclusive petitioner, Lillian Levy, received compensation for brokerage services rendered by her during each of said years in connection with the purchase and sale of various parcels of realty located in the State of New York.

11. The services rendered as aforesaid by the petitioner, Lillian Levy, during the years 1960 to 1965 inclusive, in

connection with transactions involving the purchase and sale of real estate located in New York State were rendered by her as a self-employed broker and not as an employee.

12. The New York State income tax returns of the petitioner herein for the years 1960, 1961, 1962, 1963, 1964 and 1965 represent the amounts received by the petitioner, Lillian Levy, for each of the years 1960 and 1961 as "Profit from Business, Profession or Farming" and also represent the amounts received by the petitioner, Lillian Levy, as "Business income" for each of the years 1962, 1963, 1964 and 1965.

CONCLUSIONS OF LAW

A. That the burden of establishing that the services rendered by the petitioner, Lillian Levy, during the years 1960 to 1965 inclusive in connection with the purchase and sale of various parcels of real property in New York State do not constitute an activity subject to the unincorporated business tax is upon the said petitioner.

B. That the petitioner, Lillian Levy, has failed to establish that the services rendered by her as aforesaid do not constitute an activity subject to the unincorporated business tax.

C. That the services rendered as aforesaid by the petitioner, Lillian Levy, during the years 1960 to 1965 inclusive in connection with transactions involving the purchase and sale of real estate located in New York State were rendered by her as a self-employed real estate broker and constitute, therefore, an activity subject to the unincorporated business tax.

D. That the burden of establishing that the New York State income tax returns of the petitioners herein for the years 1960 to 1965 inclusive do not correctly reflect the amounts received by the petitioner, Lillian Levy, for each of the years 1960 and 1961 as "Profit from Business, Profession or Farming" and the amounts received by said petitioner as "Business income" for each of the years 1962, 1963, 1964 and 1965 is upon the said petitioner, Lillian Levy.

E. The petitioner, Lillian Levy, has failed to establish that the New York State income tax returns of the petitioners herein for the years 1960 to 1965 inclusive do not correctly reflect the amounts received by the petitioner, Lillian Levy, for each of said years as either "Profits from Business, Profession or Farming" or as "Business Income."

F. That the New York State income tax returns of the petitioners herein for the years 1960 to 1965 inclusive represent the amounts received by the petitioner, Lillian Levy, for each of the years 1960 and 1961 as "Professional Business or Farming" profit and also represent the amounts received by the petitioner, Lillian Levy, as "Business income" for each of the years 1962, 1963, 1964 and 1965.

G. That the petition of Lillian Levy is denied and the Notice of Deficiency issued on May 26, 1969, with respect to the years 1960 to 1964 inclusive is sustained.

H. That the petition of Harold Levy and Lillian Levy insofar as it relates to the petitioner, Lillian Levy, is denied and the Notice of Deficiency issued on May 26, 1969, with respect to the year 1965 is sustained as to the petitioner, Lillian Levy.

DATED: Albany, New York
June 11, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

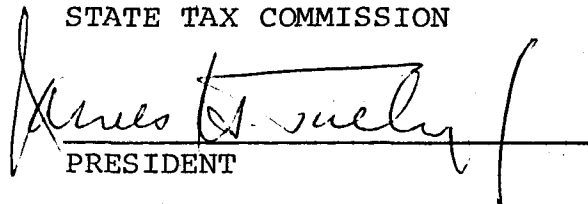
F. That the New York State income tax returns of the petitioners herein for the years 1960 to 1965 inclusive represent the amounts received by the petitioner, Lillian Levy, for each of the years 1960 and 1961 as "Professional Business or Farming" profit and also represent the amounts received by the petitioner, Lillian Levy, as "Business income" for each of the years 1962, 1963, 1964 and 1965.

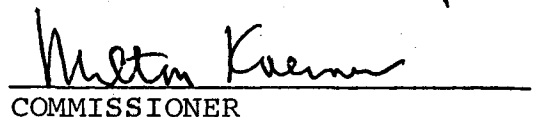
G. That the petition of Lillian Levy is denied and the Notice of Deficiency issued on May 26, 1969, with respect to the years 1960 to 1964 inclusive is sustained.

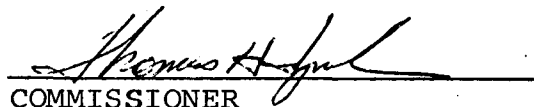
H. That the petition of Harold Levy and Lillian Levy insofar as it relates to the petitioner, Lillian Levy, is denied and the Notice of Deficiency issued on May 26, 1969, with respect to the year 1965 is sustained as to the petitioner, Lillian Levy.

DATED: Albany, New York
June 11, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER