

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

Harold Eliasberg

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1968, 1969, 1970 and 1971

State of New York  
County of Albany

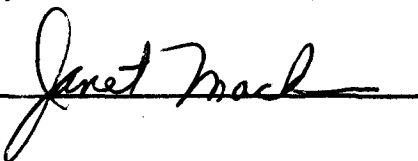
Marsina Donnini, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 27 day of July, 1977, she served the within  
Notice of Decision by (certified) mail upon Harold Eliasberg

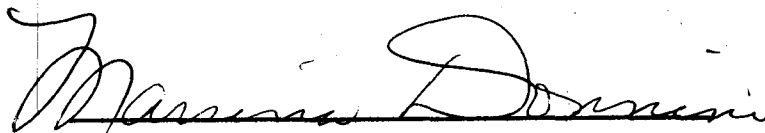
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Harold Eliasberg  
21 Barkers Point Road  
Sands Point  
Long Island, New York 11050  
and by depositing same enclosed in a postpaid properly 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~~  
~~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

27 day of July, 1977.

  
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STATE TAX COMMISSION

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Notice of Decision by (certified) mail upon Samuel J. Singer, Esq.

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Samuel J. Singer, Esq.  
30 Vesey Street  
New York, New York 10007

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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

27 day of July, 19 77

Marsina Donnini

Janet Mack



STATE OF NEW YORK  
STATE TAX COMMISSION  
TAX APPEALS BUREAU  
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

July 27, 1977

Mr. Harold Eliasberg  
21 Barkers Point Road  
Sands Point  
Long Island, New York 11050

Dear Mr. Eliasberg:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Joseph Chyrywaty  
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

## STATE TAX COMMISSION

## DECISION

I. Whether the petitioner, Harold Eliasberg's activities as a securities broker for the years 1968, 1969, 1970 and 1971 qualified him for a professional exemption under section 703(c) of the Tax Law.

II. Whether the income received by the petitioner, Harold Eliasberg, from his activities as a securities broker is subject to unincorporated business tax or whether he is an employee exempt from the unincorporated business tax.

III. Whether the petitioner, Harold Eliasberg, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1968, 1969, 1970 and 1971.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Income Tax Bureau issued statements of audit changes on January 22, 1973 for the years 1968, 1969 and 1970 and on April 6, 1973 for the year 1971. The aforesaid statements asserted unincorporated business tax for said years and penalties under section 685(a) for the year 1968 and penalties under sections 685(a)(1) and 685(a)(2) for the years 1969, 1970 and 1971. The petitioner, Harold Eliasberg, under protest, remitted payments in the sum of \$6,735.97 on April 23, 1973, \$1,275.85 on July 19, 1973, and \$2,262.25 on March 7, 1974 covering all unincorporated business taxes, penalties and interest due for said years.

2. Petitioner, Harold Eliasberg, timely filed claims for refunds for the years 1968, 1969, 1970 and 1971.

3. Petitioner, Harold Eliasberg, was an independent stock broker on the floor of the New York Stock Exchange during said years. He executed orders directed to him by member firms of the New York Stock Exchange.

4. During the years 1968 through 1971, the member firms for whom the petitioner performed services did not withhold Federal and New York State income taxes or social security tax from the commissions paid him. He was not reimbursed for any business expenses. He was free to perform services for other member firms. He did not have any written employment contracts. The member firms for whom he performed services did not exercise any substantial supervision or control over his activities or over the time he devoted to such activities.

5. Petitioner had to meet the requirements of the New York Stock Exchange in order for him to qualify as an independent floor broker on the Exchange. The requirements included the purchase of a "seat" on the Exchange and the passing of a written test. The petitioner was thoroughly investigated and is subject to the rules and laws of the New York Stock Exchange.

6. The New York Stock Exchange does not require a college degree or educational background to qualify for a "seat" on the Exchange. However, the petitioner is a college graduate and subsequently took courses at the Stock Exchange Institute and the Commodity Institute.

7. Petitioner was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1968, 1969, 1970 and 1971.

8. That the income received by the petitioner from the firms for whom he performed services during the years 1968 through 1971 constituted income from his regular business as a floor broker and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the

meaning and intent of section 703(b) of the Tax Law.

9. That the activities of the petitioner, as a floor broker during the years 1968 through 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 of the Tax Law.

10. That the activities of the petitioner during the years 1968 through 1971 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.

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

12. That the petition for refund is granted to the extent of cancelling the aforesaid penalties imposed in the amount of \$740.29 for the year 1968; \$845.51 for the year 1969, \$480.63 for the year 1970, and \$96.72 for the year 1971; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
July 27, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER