

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD ELKINS

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) ~~on Period(s)~~ :
1963 and 1964.

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 22nd day of August, 1977, she served the within Notice of Decision by (certified) mail upon Cyril H. Hermele & Company, CPA's (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Cyril H. Hermele
Cyril H. Hermele & Company, CPA's
225 Broadway
New York, New York 10007
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 August, 1977.

Marsina Donnini

James Mach

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD ELKINS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (a) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1963 and 1964.

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 22nd day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Howard Elkins
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Howard Elkins
75 Ivy Way
Port Washington, 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 the)~~ petitioner herein and that the address set forth on said wrapper is the
~~xxxxxx~~ last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

22nd day of August, 1977.

Marsina Donnini

Janet Mack



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

August 22, 1977

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

Howard Elkins
75 Ivy Way
Port Washington, New York 11090


Dear Mr. Elkins:

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 **(a) 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 Chyrys
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HOWARD ELKINS : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Taxes :
under Article 23 of the Tax Law for the :
Years 1963 and 1964.

Petitioner, Howard Elkins, residing at 75 Ivy Way, Port Washington, New York 11050, 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 1963 and 1964 (File No. 01152).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on April 25, 1977 at 1:15 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Cyril H. Hermele. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Whether the income received by the petitioner, Howard Elkins, from his activities as a business representative during the years 1963 and 1964 is subject to unincorporated business tax.

and, if so, whether the income should be allocated as a business carried on within and without the State of New York in accordance with section 707 of the Tax Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Howard Elkins, and his wife, timely filed New York State resident income tax returns for the years 1963 and 1964. He did not file unincorporated business tax returns for said years.

2. On May 22, 1967, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$548.27, against the petitioner, Howard Elkins, on the grounds that his activities as reported on his New York State income tax returns constituted the carrying on of an unincorporated business. The Bureau also assessed penalties in accordance with section 685 of the Tax Law.

3. During the years 1963 and 1964, petitioner, Howard Elkins, was employed by Lloyds Packings Warehouses (Holdings) Limited of Manchester, England and their various related subsidiary corporations. The above said firm and its subsidiaries did not maintain any offices in the United States. Petitioner, Howard Elkins, did not represent any other firms during said years.

4. Petitioner, Howard Elkins, was the sole business representative of the aforesaid firm in the United States. His duties involved both the buying and selling of goods and products, (such as raw

materials and machinery). In addition he would advise the firm in areas of international and foreign trade. He could not enter into any business transaction without prior approval from the firm.

5. Petitioner, Howard Elkins, received a stipulated salary on a regular basis. He did not receive any commission income. His duties with the firm required him to be available in England, and approximately half of his time was spent in England. He was supplied with office space facilities, secretarial and telephone services by the firm while in England. All expenses were reimbursed by the firm with the exception of his local New York activities. Petitioner, Howard Elkins, submitted schedules of days worked in Europe for the years 1963 and 1964. During the years 1963 and 1964, he spent 194 days and 110 days, respectively, in Europe on business.

6. During the years 1963 and 1964, the aforesaid firm did not withhold Federal and New York State taxes and social security taxes. He was not covered under any employee related plans. However, the petitioner maintained that this was done because the firm did not want to become involved with problems of employee relations in the United States.

7. That the income received by petitioner, Howard Elkins, during the years 1963 and 1964 from the aforesaid firm constituted compensation as an employee exempt from the imposition of unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law.

8. That the aforesaid activities of the petitioner, Howard Elkins, during the years 1963 and 1964, did not constitute the carrying on of an unincorporated business and his income derived therefrom is not subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

9. That the petition of Howard Elkins is granted and the Notice of Deficiency in the sum of \$548.27 is cancelled.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT
COMMISSIONER
COMMISSIONER