

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FAULKNER, DAWKINS & SULLIVAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or  
a Revision of a Determination or a Refund  
of Unincorporated Business  
Taxes under Article (x) 23 of the  
Tax Law for the Year(s) ~~on Period(s)~~  
1968, 1970, 1971 and 1972.

State of New York  
County of Albany

Bruce Batchelor, 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 14th day of April, 1977, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Faulkner, Dawkins &  
Sullivan (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Faulkner, Dawkins & Sullivan  
One New York Plaza  
New York, New York 10004

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

14th day of April, 1977.

Bruce Batchelor

Janet Busch

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

FAULKNER, DAWKINS & SULLIVAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(x) 23 of the :  
Tax Law for the Year(s) ~~xxx~~ ~~xxxx~~ ~~xxxx~~ :  
1968, 1970, 1971 and 1972.

State of New York  
County of Albany

Bruce Batchelor, 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 14th day of April, 1977, she served the within  
Notice of Decision by (certified) mail upon Jack Wong

(representative of) the petitioner in the within proceeding,

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

Jack Wong, CPA  
Oppenheim, Appel, Dixon & Co.  
One New York Plaza  
New York, New York 10004

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

14th day of April, 1977

Bruce Batchelor

Just Mack



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

April 14, 1977

TELEPHONE: (518) **457-1723**

**Faulkner, Dawkins & Sullivan**  
**One New York Plaza**  
**New York, New York 10004**

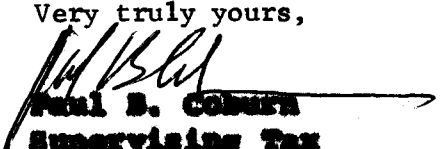
**Gentlemen:**

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

Please take further notice that pursuant to  
Section **(E) 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 A. Coburn**  
**Supervising Tax**  
**Hearing Officer**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petitions	:	
of	:	
FAULKNER, DAWKINS & SULLIVAN	:	DECISION
for Redetermination of Deficiencies or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1968, 1970, 1971 and 1972.	:	

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Petitioner, Faulkner, Dawkins & Sullivan, 60 Broad Street, New York, New York 10004, filed petitions for redetermination of deficiencies or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968, 1970, 1971 and 1972. (File Nos. 00355 and 15460).

A formal hearing was scheduled to be held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 22, 1976.

The representative for the petitioner waived a formal hearing, requested a decision based upon the file of the Income Tax Bureau and submitted a brief in lieu of the presentation of oral testimony. The file and petitioner's brief have been duly examined and considered.

ISSUE

Whether or not the petitioner, in computing unincorporated business tax, properly deducted commissions paid to registered representatives who were general partners of petitioner.

FINDINGS OF FACT

1. Petitioner, Faulkner, Dawkins & Sullivan, filed partnership and unincorporated business tax returns for the years 1968, 1970, 1971 and 1972. In computing its unincorporated business taxable income on said returns, the partnership deducted commissions paid to registered representatives who were general partners.

2. On March 20, 1972, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner for the year 1968, imposing additional unincorporated business tax in the amount of \$14,397.13, plus interest of \$2,531.30, for a total of \$16,928.43. Accordingly, it issued a Notice of Deficiency therefor. The petitioner filed a timely petition for redetermination of said deficiency.

3. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes and Notice of Deficiency against the petitioner for the year 1970, imposing additional unincorporated business tax in the amount of \$19,020.54, plus interest of \$3,416.09, for a total of \$22,436.63. The petitioner filed a

timely petition for redetermination of said deficiency. On June 4, 1974, the Income Tax Bureau reduced the wage payment adjustment with respect to the year 1970 by \$50,833.30, and cancelled the deficiency in the amount of \$3,297.96, plus interest of \$502.83. Therefore, the correct amount of additional unincorporated business tax due for the year 1970 amounts to \$16,224.71, plus interest of \$2,913.96, for a total of \$19,138.67.

4. On April 12, 1976, the Income Tax Bureau issued a Statement of Audit Changes and Notice of Deficiency against the petitioner for the years 1971 and 1972, imposing additional unincorporated business tax in the amount of \$33,430.11 (\$19,385.03 for 1971 and \$14,045.08 for 1972), with interest of \$7,796.08, for a total of \$41,226.19. The petitioners filed a timely petition for redetermination of said deficiency.

5. The adjustments for the years in issue were based upon the "salaries" or commissions" paid to general partners and then deducted in computing unincorporated business taxable income.

6. During the years in issue, the petitioner, a limited partnership having its sole place of business at 60 Broad Street, City and State of New York, was engaged in the security business as a broker-dealer. The partnership employed "registered representatives" and "account executives" who received compensation in the form of commissions with respect to brokerage transactions effectuated by them. The management of the partnership made certain

of its "registered representatives" and "account executives" general partners, whereby they received commissions for their services plus a 1% distributive share of the profits. The Income Tax Bureau, in its recomputation of additional unincorporated business tax due, included the aforementioned commissions paid to such general partners as additional taxable business income.

7. The amounts paid to the general partners who acted as "registered representatives" and deducted by the petitioner in its computation of unincorporated business tax, represented amounts paid to such partners for services rendered by them to the partnership.

8. Section 706(3) of the Tax Law provides that:

"(3) No deduction shall be allowed (except as provided in section seven hundred eight) for amounts paid or incurred to a proprietor or partner for services or for use of capital."

9. The petitioner contends that the amounts paid to the general partners constituted "wages" as "employees" for services by partners not acting in the capacity of partners, in accordance with section 707(a) of the Internal Revenue Code and Federal Income Tax Regulation section 1.707-1.

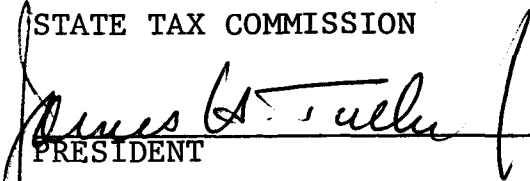
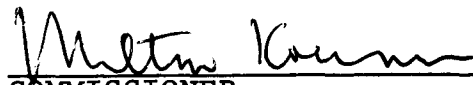
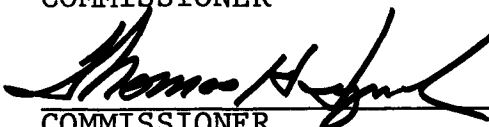
CONCLUSIONS OF LAW

A. That the amounts paid to the general partners in the form of "commissions" as "registered representatives" were not deductible in computing unincorporated business income in accordance with the provisions of section 706(3) of the Tax Law.

B. That section 707(a) of the Internal Revenue Code has no application to the facts in the instant case and does not supersede section 706(3) of the Tax Law.

C. That the petitions of Faulkner, Dawkins & Sullivan for the years 1968, 1970, 1971 and 1972 are hereby denied, and the notices of deficiency for said years are hereby sustained. Additional statutory interest will be imposed until the deficiency is paid.

DATED: Albany, New York  
April 14, 1977

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER