

sole stockholder and officer, were exempt from unincorporated business taxes as wages under section 703(b) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Philip Hirsch, and his wife, filed joint New York State income tax resident returns for the years 1963 through 1970. He did not file unincorporated business tax returns for those years.

2. On November 26, 1973, the Income Tax Bureau issued a Notice of Deficiency and Statement of Audit Changes against petitioner, Philip Hirsch detailing unincorporated business taxes due on the income reported by petitioner, Philip Hirsch, as wages, and on the income received by him from his management activities as an officer of his wholly owned corporations. The statement of Audit Changes stated that based on the decision of the State Tax Commission dated January 25, 1971, for the tax years 1961 and 1962, the business activities reported by petitioner were held to constitute the carrying on of an unincorporated business. The deficiency was itemized as follows:

<u>Year</u>	<u>Deficiency</u>	<u>Interest</u>	<u>Total</u>
1963	\$ 460.00	\$ 265.33	\$725.33
1964	387.20	200.10	587.30
1965	406.40	185.64	592.04
1966	304.00	120.63	424.63
	<u>\$1,557.60</u>	<u>\$ 771.70</u>	<u>\$2,329.30</u>

<u>Year</u>	<u>Deficiency</u>	<u>Interest</u>	<u>Total</u>
1967	\$ 132.80	\$ 44.73	\$ 177.53
1968	211.33	58.50	269.83
1969	495.00	107.32	602.32
1970	211.20	33.12	244.32
	<u>\$1,050.33</u>	<u>\$ 243.67</u>	<u>\$1,294.00</u>

3. Salary income reported by petitioner, Philip Hirsch, was held to be subject to unincorporated business tax, except for the salary paid to petitioner by Cobal Garage, Inc. The Income Tax Bureau redetermined total business income for the respective years by adding petitioner's reported salary income as follows:

	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>
Reported Business Income	\$15,675.00	\$18,600.00	\$18,950.00	\$11,000.
Salary Income	5,200.00			5,000.
Revised Business Income	<u>\$20,875.00</u>	<u>\$18,600.00</u>	<u>\$18,950.00</u>	<u>\$16,000.</u>
	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Reported Business Income	\$5,700.00	\$ 6,803.00	\$ 9,750.00	\$ 6,300.
Salary Income	6,000.00	4,500.00	8,000.00	5,000.
	<u>\$11,700.00</u>	<u>\$11,303.00</u>	<u>\$17,750.00</u>	<u>\$11,300.</u>

For each of the years in question, a deduction for contributions was made in order to arrive at a basis for computing the permissible 20% allowance for taxpayer services and subtraction of the \$5,000.00 maximum statutory exemption. The taxable business income thus obtained was used as a basis upon which the unincorporated business tax was assessed, as shown on the Statements of Audit Changes.

4. During the entire period 1963 through 1970, petitioner, Philip Hirsch, was a licensed real estate broker. He maintained an office at 1841 Broadway, New York City. He had a business telephone and was

listed in the yellow pages of the telephone directory as a real estate broker. However, petitioner, Philip Hirsch, did not hold himself out to the general public as a dealer in real estate or mortgages.

5. Petitioner, Philip Hirsch, engaged in the operation of real estate, its management, the supervision of repairs and maintenance, the finance of mortgages and anything concerned with servicing mortgages. During the years 1963 through 1970, petitioner, Philip Hirsch, did not buy or sell any real property for his own account, or for any of the corporations of which he was the sole stockholder and officer.

6. Petitioner, Philip Hirsch, was the sole officer and stockholder of the following corporations, all of which had their sole offices in his office at 1841 Broadway, New York, New York. They were Convam Garage Corp., Cobal Garage, Inc., 418 Trading Corporation, Carlin Trading Corporation, Mirabel Estates, Inc. and Carbel Trading Corporation.

7. Convam Garage Corp. owned and operated a two-story garage. Petitioner, Philip Hirsch, actively managed that garage. He received a salary in each of the years 1966 through 1970, ranging from \$2,500.00 in 1966 to \$5,000.00 in 1970. Withholding tax statements for 1968 and 1970 showed that no income tax was withheld by Convam Garage Corp. Petitioner, Philip Hirsch, Could not state whether social security taxes had been withheld. His then accountant had died and records were alledgedly unavailable.

8. Cobal Garage, Inc., whose sole stockholder was petitioner, Philip Hirsch, owned and operated a garage in New York City, an office building in Corpus Christi, Texas, and a commercial taxpayer building in the latter city. Petitioner, Philip Hirsch, managed the New York City garage directly, and the Corpus Christi property through an agent. He placed fire and liability insurance on the garage, paid interest and amortization on its mortgage, negotiated leases and renewals, and saw to it that structural and sidewalk repairs were made. Cobal Garage, Inc. paid petitioner a "salary" in 1963, 1966, 1967, 1968 and 1970 and gave him a withholding tax statement in 1968 and 1970. No income taxes were withheld.

9. For each of the other corporations, petitioner, Philip Hirsch, invested in second and third mortgages. He made the demands for mortgage payments, made collections, retained attorneys when foreclosures became necessary, and performed other duties required to manage the mortgages owned by the several corporations. In all cases, as president and sole stockholder, petitioner, Philip Hirsch, decided what his compensation was to be for managing the mortgages owned by the respective corporations.

10. Petitioner, Philip Hirsch, personally held a mortgage on 2-4 St. Nicholas Terrace, New York, New York. No income was reported as derived from that investment.

11. The only records produced by petitioner, Philip Hirsch, were notices sent to mortgage debtors and notations of payments received, as well as checkbook stubs.

CONCLUSIONS OF LAW

A. That the sums received by petitioner, Philip Hirsch, from Cobal Garage, Inc. and Convam Garage Corp., as detailed below, constituted wages as an employee exempt from the imposition of unincorporated business tax in accordance with the intent and meaning of section 703(b) of the Tax Law, and not receipts from his regular business of real estate brokerage and management.

<u>Year</u>	<u>Cobal</u>	<u>Convam</u>	<u>Total</u>
1963	\$5,200.00		\$5,200.00
1966	2,500.00	\$2,500.00	5,000.00
1967	2,500.00	3,500.00	6,000.00
1968	3,500.00	4,500.00	8,000.00
1969	4,000.00	4,000.00	8,000.00
1970	4,000.00	5,000.00	10,000.00

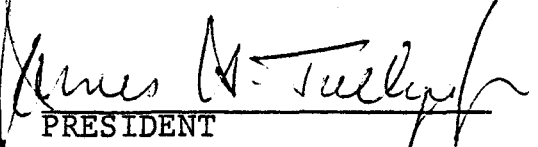
B. That the sums received from the wholly owned corporations, namely, 418 Trading Corp., Carlin Trading Corp., Carbel Trading Corp., and Mirabel Estates, Inc., heretofore denominated "commissions" by petitioner, Philip Hirsch, and later claimed to be wages as an employee of the several named corporations, were receipts from petitioner's usual business of real estate and mortgage management. These receipts were not received by petitioner, Philip Hirsch, as an owner, lessee or fiduciary of real estate in accordance with the meaning and intent of section 703(e) of the Tax Law, as he was not the owner, lessee or fiduciary of the corporate properties.

C. That the petition of Philip Hirsch, for redetermination of the unincorporated business tax under Article 23 of the Tax Law is granted to the extent of allowing as exemption from the unincorporated business tax the amounts delineated as wages in "A" above.

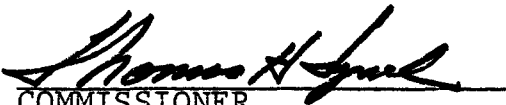
The Income Tax Bureau is directed to recompute the unincorporated business tax due for each of the years 1963 through 1970 and to issue a revised Notice of Deficiency. No penalty shall be assessed, but legal interest shall be charged until the tax is fully paid.

DATED: Albany, New York
February 28, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER