

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARNOLD H. KAGAN and EDNA H. KAGAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Unincorporated Business Taxes
Taxes under Article (s) 23 of the
Tax Law for the Year (s) ~~XXXX XXXX~~ 1965.:
~~XXXX XXXX~~

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 31st day of May, 1977, she served the within
Notice of Decision by (certified) mail upon Arnold H. Kagan and
Edna H. Kagan
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Arnold H. Kagan
956 Wateredge Place
Hewlett Harbor, New York
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

31st day of May, 1977

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ARNOLD H. and EDNA H. KAGAN

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 ~~(2000)~~ 1965.:
~~(2000)~~

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 31st day of May, 1977, she served the within
Notice of Decision by (certified) mail upon Paul J. Feldman, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Paul J. Feldman, CPA
Max M. Feldman & Co.
20 West Park
Long Beach, New York 11561
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

31st day of May, 1977

Bruce Batchelor

Janet 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

May 31, 1977

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

Mr. & Mrs. Arnold H. Kagan
956 Wateredge Place
Hewlett Harbor, New York

Dear Mr. & Mrs. Kagan:

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

Please take further notice that pursuant to
Section(3) **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 E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
ARNOLD H. KAGAN and EDNA H. KAGAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1965.	:	

Petitioners, Arnold H. Kagan and Edna H. Kagan, 956 Wateredge Place, Hewlett Harbor, New York, filed petitions for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1965. (File No. 01293).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 9, 1976 at 1:30 P.M. The petitioners appeared by Paul J. Feldman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Solomon Sies, Esq., of counsel).

ISSUE

Whether the income derived in 1965 from the sale of concessionary rights by petitioners, Arnold H. Kagan and Edna H. Kagan, was derived from the holding, leasing or managing of real property and, therefore, exempt from the unincorporated business tax under Section 703(e) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Arnold H. Kagan and Edna H. Kagan, filed a New York State combined income tax return for the year 1965 (IT-208). They listed business earnings for Arnold H. Kagan of \$20,069.87 and \$32,731.64 for Edna H. Kagan. These two figures had been reported jointly on their Federal return for 1965, as \$52,801.51.

2. On April 1, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Arnold H. Kagan, imposing unincorporated business tax for the year 1965 of \$517.77, plus \$115.13 in penalties and \$60.99 in interest, upon the grounds that the petitioner failed to file an unincorporated business tax return for the year 1965. It also imposed additional personal income tax in the sum of \$57.25 which is not being contested by the petitioner. Accordingly, a Notice of Deficiency in the amount of \$693.89 was issued.

3. On April 1, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Edna H. Kagan, imposing unincorporated business tax for the year 1965 of \$1,169.41, plus \$278.04 in penalties and \$137.74 in interest, upon the grounds that the petitioner failed to file an unincorporated business tax return for the year 1965. It also imposed additional personal income tax in the sum of \$57.25 which is not being contested by petitioner. Accordingly, a Notice of Deficiency in the amount of \$1,585.19 was issued.

4. The income in issue was derived from the sale by petitioners of concessionary rights at the 1964-65 World's Fair held in New York, New York.

5. The petitioners, Edna H. Kagan and Arnold H. Kagan, entered into an agreement with Judith Donohue, by which petitioners purchased certain concessionary rights in "Belgium Village" at the New York World's Fair. They paid for these rights by giving Judith Donohue, after expenses, 50% of the profits from the sale of these rights to various sub-concessionaires.

6. No documentary or other substantial evidence, such as a lease or sub-lease, was offered by the petitioners to show that this venture was anything other than a promotion of concession rights.

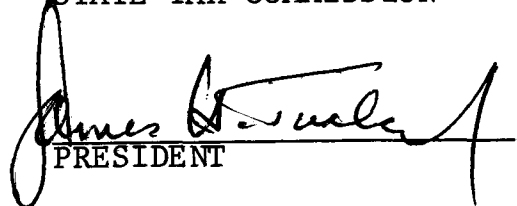
CONCLUSIONS OF LAW

A. That, since the income received by petitioners, Arnold H. Kagan and Edna H. Kagan, during the year 1965 from the sale of concessionary rights was not derived from the holding, leasing or managing of real property, therefore, said income was not exempt from the unincorporated business tax, within the meaning and intent of section 703(e) of the Tax Law.

B. That the petitions of Arnold H. Kagan and Edna H. Kagan are denied and the notices of deficiency issued April 1, 1968 are sustained.

DATED: Albany, New York
May 31, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER