

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KENIN & POSNER MANAGEMENT CO.

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)~~
1960 through 1968.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of May, 1977, he served the within
Notice of Decision by (certified) mail upon Kenin & Posner
Management Co. (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Kenin & Posner Management Co.
16 Court Street
Brooklyn, New York 11201

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

16th day of May, 1977.

Bruce Batchelor

Janet Bush

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1960 through 1968.

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 16th day of May , 1977, she served the within
Notice of Decision by (certified) mail upon Alan S. Rosenberg, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alan S. Rosenberg, Esq.
300 Park Avenue
New York, New York 10022

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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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

16th day of May , 1977

Bruce Batchelor

Janet B. Mel



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 16, 1977

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

**Kanin & Posner Management Co.
16 Court Street
Brooklyn, New York 11201**

Gentlemen:

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

Please take further notice that pursuant to
Section(**§ 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 TAX COMMISSION

In the Matter of the Petition :
of :
KENIN & POSNER MANAGEMENT CO. :
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1960 through 1968. :

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 15, 1976 at 11:00 A.M. The petitioner appeared by Alan S. Rosenberg, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

Whether the petitioner engaged in a real estate management business subject to the unincorporated business tax and, if so, whether the collection of the claimed deficiency is barred by the statute of limitations or by reason of laches.

FINDINGS OF FACT

1. Petitioner, Kenin & Posner Management Co., filed New York State Income and Unincorporated Business Tax Partnership Returns for the years 1960 to 1968 inclusive and claimed in each of said returns, that the income therein reported was not subject to the unincorporated business tax.

2. On May 24, 1971, the Income Tax Bureau issued a Statement of Audit Changes against Leonard Posner, Charles H. Posner, Louis Kanin, et.al., individually and as co-partners, d/b/u the firm and style of Kenin & Posner Management Company for unincorporated business taxes for the years 1960 to 1968 inclusive and, in accordance with said Statement of Audit Changes, issued a Notice of Deficiency, dated May 24, 1971, in the sum of \$39,022.22.

3. (a) The Kenin & Posner Management Co. is a partnership organized pursuant to written agreement of partnership, made December 30, 1953 by and among the persons therein named, consisting of various members of the Kenin & Posner families and of persons related to said families, namely, Leonard Posner, Geraldine Posner, Molly Kenin, Abel Kenin, Lily Maslow and Harry Maslow.

(b) During the period from 1960 to and including 1968, the partners of Kenin & Posner Management Co. were Leonard Posner, Charles Posner, Abel Kenin, Lily Maslow and Harry Maslow, hereafter referred to as the "Kenin & Posner partners."

4. Said partnership agreement stated that it was formed for the following purposes:

"To manage, acquire by purchase or otherwise, hold, own, exchange, sell, hire, lease, or otherwise deal or trade in real property either improved or unimproved and any estate, interest or rights therein in any State of the United States; to carry on any other lawful trade or business incident thereto or proper or useful in connection with the purchase, holding, ownership, exchange, hire, leasing, maintenance and management of real property; to carry on any business incident to the alteration and repair of any improved realty, either owned, leased or managed by said partnership."

5. In response to question "A", "Kind of Business," appearing on the aforesaid New York State Income and Unincorporated Business Tax Partnership Returns for each of the years 1960 through 1968, the following was stated: "Real Estate Management."

6. The Kenin & Posner partners during the years 1960 through 1968 had interests in ten buildings, consisting of apartment houses and taxpayers, as follows:

(a) Title to eight of said buildings was vested in eight separate corporate entities, each of said eight corporate entities owning one of said buildings, said eight corporate entities being Grand Army Plaza Corp., Van Plaza Realty Corp., Bruck Leff Realty Corp., 1651 Carroll Realty Corp., Lefferts Kingston Corp., 324 Utica Realty Corp., Utica Carroll Realty Corp., and Clarendon Gardens, Inc.

(b) Title to the remaining two of said ten buildings was vested in another corporate entity named Kenin & Posner Inc.

(c) Kenin & Posner, Inc. was also holding company, owning and holding 100% of the shares of each of the corporate entities named in sub-paragraph "(a)" above, except the shares of stock of Clarendon Gardens, Inc.

(d) The Kenin & Posner Partners, during the period 1960 through 1968, together with others, owned all of the shares of stock of Kenin & Posner, Inc. and Clarendon Gardens, Inc.

(e) However, during the period from 1960 to and including 1968 the Kenin & Posner partners were the sole officers and directors of each of the nine above named corporations.

7. Each of the aforesaid nine corporations maintained its own bank account, collected its own rents, issued receipts therefor, deposited the funds it received in its own bank account, signed its own leases, employed its own personnel, dealt through its officers with its unions, executed its own union contracts, borrowed funds when loans were needed, and through its officers, executed the loan documents required, and paid with its own funds, installments of mortgage principal and interest on mortgages covering the property it owned.

8. (a) Kenin & Posner, Inc., the aforesaid holding company, was the lessee of an office at 16 Court Street, Brooklyn, New York during the period from 1960 through 1968, which said office served as a common office for all the corporations herein above named, all of which corporations shared the expenses of maintaining said office.

(b) An agent, one Nathan Lopatin, acted, during the aforesaid period, as renting agent for all of the aforesaid buildings and also attended to the making of repairs required by the aforesaid buildings.

9. Kenin & Posner Management Co., the petitioner herein, during the period from 1960 to and including 1968, had no employees, paid no rent, incurred no expenses, did not maintain regular books of account, issued no financial statement, entered into no agreements on behalf of the aforesaid nine corporations and did not engage in the management of any of the buildings owned by the aforesaid nine corporations.

10. Each of the aforesaid nine corporations transmitted to the Kenin & Posner Management Co. a percentage of the gross rentals that it received during the period from 1960 to 1968 for the purpose of compensating the officers and directors of said nine corporations for the services rendered by them to said nine corporations.

11. The sole function of the Kenin & Posner Management Co. during the aforesaid period from 1960 to and including 1968 was to act as a conduit for the receipt of funds transmitted to it by the aforesaid nine corporations as aforesaid and for the distribution of the funds so received to the Kenin & Posner partners as compensation for the services rendered by them as officers and directors of the said nine corporations.

CONCLUSIONS OF LAW

1. That while the partnership agreement, dated December 30, 1953, stated the Kenin & Posner Management Co. was organized for the purpose, among other things, of managing real property and the New York State Income and Unincorporated Business Tax Partnership Returns filed by the Kenin & Posner Management Co. for the years 1960 through 1968 described its business as "Real Estate Management", it did not in fact conduct or engage in the management of the real property owned by the nine corporations above named during the years 1960 through 1968 and, therefore, the income reported by the Kenin & Posner Management Co. for said years is not subject to the unincorporated business tax.

2. That the utilization of the Kenin & Posner Management Co. during the years 1960 through 1968 as a conduit for the receipt of funds from the above named nine corporations and the disbursement of said funds to the Kenin & Posner partners did not constitute the carrying on of an unincorporated business and therefore the income so received and disbursed was not subject to the unincorporated business tax under section 703 of the Tax Law.

3. That the petition of the Kenin & Posner Management Co. is granted and the Notice of Deficiency issued May 24, 1971 is cancelled.

DATED: Albany, New York
May 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

UBT

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

May 16, 1977

TELEPHONE: (518) 457-1723

Kenin & Posner Management Co.
16 Court Street
Brooklyn, New York 11201

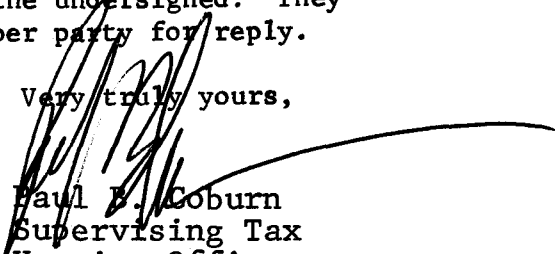
Gentlemen:

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

Please take further notice that pursuant to
Section(§) 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 B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

FORMAL HEARING

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

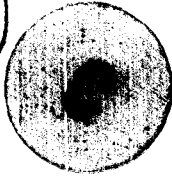
CERTIFIED

No. 402127

MAIL

BROOKLYN, N.Y.
19 MAY 1977
AM

RETURNED FOR POSTAGE



Kenin & Posner Management Co.
16 Court Street
Brooklyn, New York 11201



UNITED STATES POSTAL SERVICE



98

STATE TAX COMMISSION

DECISION

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 15, 1976 at 11:00 A.M. The petitioner appeared by Alan S. Rosenberg, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

Whether the petitioner engaged in a real estate management business subject to the unincorporated business tax and, if so, whether the collection of the claimed deficiency is barred by the statute of limitations or by reason of laches.

NOTED AND IN AGREEMENT

RECEIVED

WILLIAM S. HARRIS
1000 15th St. N.W.
Washington, D.C. 20004
Tel. 202-462-1111

Dear Mr. Harris:

I am writing to you regarding the matter of the
1000 15th St. N.W. Washington, D.C. 20004
Tel. 202-462-1111

As you know, the matter of the
1000 15th St. N.W. Washington, D.C. 20004
Tel. 202-462-1111

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FINDINGS OF FACT

1. Petitioner, Kenin & Posner Management Co., filed New York State Income and Unincorporated Business Tax Partnership Returns for the years 1960 to 1968 inclusive and claimed in each of said returns, that the income therein reported was not subject to the unincorporated business tax.

2. On May 24, 1971, the Income Tax Bureau issued a Statement of Audit Changes against Leonard Posner, Charles H. Posner, Louis Kanin, et.al., individually and as co-partners, d/b/u the firm and style of Kenin & Posner Management Company for unincorporated business taxes for the years 1960 to 1968 inclusive and, in accordance with said Statement of Audit Changes, issued a Notice of Deficiency, dated May 24, 1971, in the sum of \$39,022.22.

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(b) During the period from 1960 to and including 1968, the partners of Kenin & Posner Management Co. were Leonard Posner, Charles Posner, Abel Kenin, Lily Maslow and Harry Maslow, hereafter referred to as the "Kenin & Posner partners."

THE STATE OF NEW YORK

In SENATE, January 1, 1901.

REPORT OF THE COMMISSIONERS OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE

ON JANUARY 1, 1899.

ALBANY: J. B. LEECH, STATE PRINTER, 1901.

Price, 10 CENTS.

For sale by the State Printer.

Entered as Second-Class Matter, June 23, 1897.

Postage paid at Albany, N. Y., and at additional mailing offices.

Acceptance for mailing at special rate of postage provided for in Act of October 3, 1917.

Authorities: State of New York, Department of the Land Office.

Publication of this report is authorized by the Senate.

Printed by the State Printer, Albany, N. Y.

Copyright, 1901, by the State of New York.

All rights reserved.

No part of this publication may be reproduced without permission.

Published by the State of New York, Department of the Land Office.

Albany, N. Y., January 1, 1901.

By the State Printer.

For sale by the State Printer.

Price, 10 CENTS.

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"To manage, acquire by purchase or otherwise, hold, own, exchange, sell, hire, lease, or otherwise deal or trade in real property either improved or unimproved and any estate, interest or rights therein in any State of the United States; to carry on any other lawful trade or business incident thereto or proper or useful in connection with the purchase, holding, ownership, exchange, hire, leasing, maintenance and management of real property; to carry on any business incident to the alteration and repair of any improved realty, either owned, leased or managed by said partnership."

5. In response to question "A", "Kind of Business," appearing on the aforesaid New York State Income and Unincorporated Business Tax Partnership Returns for each of the years 1960 through 1968, the following was stated: "Real Estate Management."

6. The Kenin & Posner partners during the years 1960 through 1968 had interests in ten buildings, consisting of apartment houses and taxpayers, as follows:

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CONFIDENTIAL - DISSEM. AUTHORITY: 25X-104/116 1153

SECRET

[illegible]

3. In response to question "A", defendant's answers are as follows:

Noted. No further action.

1961 to be left to those who prefer to give up their freedom.

1. The following information was obtained from the files of the Federal Bureau of Investigation:

2. The number of persons who were killed or injured during the year 1968.

Environ 1997; 9: 100-104

STATE (S) IS APPROVED BY PERSON IDENTIFIED

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separate corporate entities, each of said entities

based on the information above, the following is a summary of the views:

100-443887-100

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ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

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(b) Title to the remaining two of said ten buildings was vested in another corporate entity named Kenin & Posner Inc.

(c) Kenin & Posner, Inc. was also holding company, owning and holding 100% of the shares of each of the corporate entities named in sub-paragraph "(a)" above, except the shares of stock of Clarendon Gardens, Inc.

(d) The Kenin & Posner Partners, during the period 1960 through 1968, together with others, owned all of the shares of stock of Kenin & Posner, Inc. and Clarendon Gardens, Inc.

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7. Each of the aforesaid nine corporations maintained its own bank account, collected its own rents, issued receipts therefor, deposited the funds it received in its own bank account, signed its own leases, employed its own personnel, dealt through its officers with its unions, executed its own union contracts, borrowed funds when loans were needed, and through its officers, executed the loan documents required, and paid with its own funds, installments of mortgage principal and interest on mortgages covering the property it owned.

(b) Little to substantiating two of the three addresses
was viewed in a light of the evidence in the other two

(c) A final letter, dated 1947, also relating to the

company and holding that the company was not a corporation

and that the company was not a corporation

of stock or corporation, dated 1947.

(d) The letter of 1947, dated 1947, dated 1947, dated 1947,

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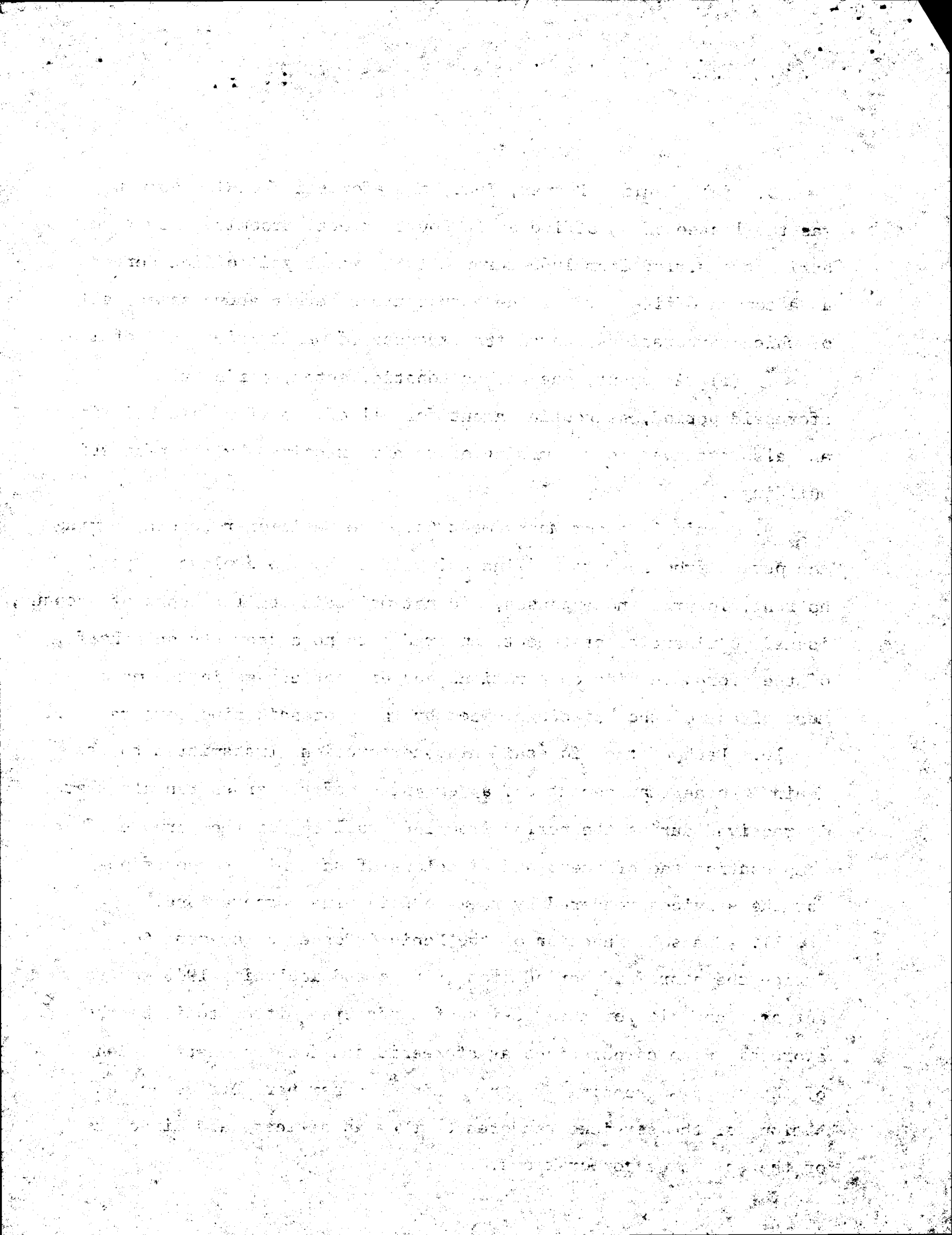
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CONCLUSIONS OF LAW

1. That while the partnership agreement, dated December 30, 1953, stated the Kenin & Posner Management Co. was organized for the purpose, among other things, of managing real property and the New York State Income and Unincorporated Business Tax Partnership Returns filed by the Kenin & Posner Management Co. for the years 1960 through 1968 described its business as "Real Estate Management", it did not in fact conduct or engage in the management of the real property owned by the nine corporations above named during the years 1960 through 1968 and, therefore, the income reported by the Kenin & Posner Management Co. for said years is not subject to the unincorporated business tax.

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3. That the petition of the Kenin & Posner Management Co. is granted and the Notice of Deficiency issued May 24, 1971 is cancelled.

DATED: Albany, New York
May 16, 1977

STATE TAX COMMISSION

James H. Trull
PRESIDENT

Milton Kravitz
COMMISSIONER

Harold J. [Signature]
COMMISSIONER

DATE: 21 OCT 1963

[illegible]

Do Not Sign

SECRET
100-441101

[Handwritten signature]