

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SWID-PEARLMAN MANAGEMENT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(30)~~ 23 of the :  
Tax Law for the Year(s) ~~1971 and 1972~~ :  
1971 and 1972

State of New York  
County of Albany

John Huhn , 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 29th day of September , 1977 , ~~he~~ served the within

Notice of Decision by (certified) mail upon Swid-Pearlman Management

~~(representative of)~~ the petitioner in the within proceeding,

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

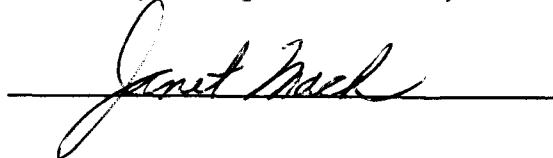
as follows: Swid-Pearlman Management  
101 Park Avenue  
New York, New York

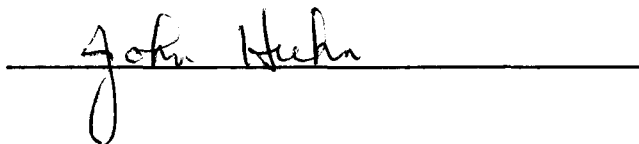
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~  
~~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

29th day of September , 1977.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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SWID-PEARLMAN MANAGEMENT

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
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Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~1971 and 1972~~ :  
1971 and 1972

State of New York  
County of Albany

John Huhn, 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 29th day of September, 1977, He served the within

Notice of Decision by (certified) mail upon Stuart Becker, CPA  
Robert E. Harrison, Esq.

(representative of) the petitioner in the within proceeding,

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

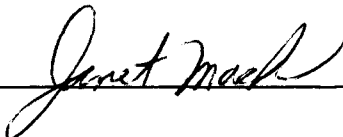
Robert E. Harrison, Esq. & Stuart Becker, CPA  
as follows: of Richard A. Eisner and Company  
280 Park Avenue  
New York, New York 10017

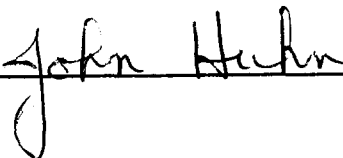
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last known address of the (representative of the) petitioner.

Sworn to before me this

29th day of September, 1977.

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

September 29, 1977

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

**Swid-Pearlman Management**  
**101 Park Avenue**  
**New York, New York**

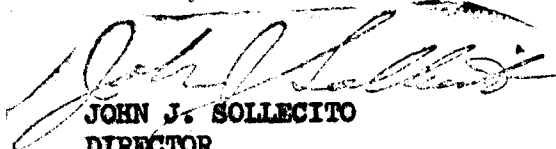
**Gentlemen:**

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 ~~105X~~ **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,

  
**JOHN J. SOLLECITO**  
**DIRECTOR**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
SWID-PEARLMAN MANAGEMENT	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1971 and 1972.	:	

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Stephen Swid and Ken Pearlman, individually and as co-partners doing business under the firm name and style of Swid-Pearlman Management, having a place of business at 101 Park Avenue, New York, New York, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1971 and 1972. (File No. 13430)

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 17, 1977 at 10:45 A.M. The petitioner appeared by Robert E. Harrison, Esq. and Stuart Becker, CPA, both of the firm of Richard A. Eisner and Co. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

Whether the petitioner is exempt from the unincorporated business tax on the ground that during the years in issue it was engaged solely in the trading of securities and commodities for its own account.

FINDINGS OF FACT

1. Stephen Swid and Ken Pearlman, individually and as co-partners doing business under the firm name and style of Swid-Pearlman Management, filed New York State partnership returns for the years 1971 and 1972, in which the partnership reported that it was engaged in investment management and was thus exempt from the payment of the unincorporated business tax.

2. On February 24, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner herein imposing unincorporated business tax of \$9,170.97 for 1971 and \$10,218.00 for 1972, for a total due of \$19,388.97, plus interest of \$3,000.21, for a grand total of \$22,389.18. Accordingly, it issued a Notice of Deficiency therefor.

3. In December of 1969, Stephen C. Swid and Kenneth Pearlman entered into an agreement of partnership. The agreement provided, in part, that:

"3. The purposes for which the Partnership is formed are to serve as the general partner of Swid Partners, a New York Limited Partnership, to engage in general investment activities and to conduct such other activities and business as may be permitted by law, whether or not related to the foregoing."

4. On or about February 27, 1970, a limited partnership known as Swid Investors was formed by Swid-Pearlman Partners as general partners and Ronier Corporation, Henry Shalom, Joseph Shalom, Richard A. Eisner, Pearl Lemchen, Lou-Midi Trust by Selwyn Lemchen, Trustee, and Carol V. Beinstein, et al. as limited partners, to purchase or otherwise acquire and to hold, sell, trade, transfer, exchange or otherwise dispose of or turn to account or realize upon securities, commodities and commodity contracts of any and all types and descriptions..."

5. On or about January 1, 1971, a limited partnership known as Southwing Partners was formed between the partnership of Swid-Pearlman Management as sole general partner and Henry Shalom, Joseph Shalom, Abe Hedaya, Norma Hedaya, Joseph N. Attie, Vivian Shalom, as Trustee, and Henry Shalom, as Trustee, as limited partners. The partnership agreement provided, in part, that the purpose of the partnership was to:

"purchase or otherwise acquire and to hold, sell, trade, transfer or exchange securities, commodities, and commodity contracts of any and all types and descriptions including but not limited to shares of capital stock, bonds, notes, debentures, trust receipts, mortgages, evidences of indebtedness, certificates of deposit, choses in action, certificates of interest or participation in any profit-sharing agreements, limited partnership interests, collateral trust certificates, voting trust certificates, fractional undivided interests in oil, gas or other mineral rights, put and call options and any and all combinations thereof (including the right to write any or all such put and call options and combinations thereof), certificates, receipts, and other instruments representing rights to receive, purchase, sell or subscribe for any of the foregoing..."

6. The partnership agreement of Swid-Pearlman Management was amended, effective as of the inception of the partnership to provide, in part, that the purposes of the partnership are "to serve as general partner of Swid Partners, a New York limited partnership and other limited partnerships, to engage in general investment activities and to conduct such other activities and business as may be permitted by law, whether or not related to the foregoing." The petitioner-partnership maintained its place of business at 101 Park Avenue, New York, New York.

7. The petitioner-partnership's income for the years in issue was derived principally from services rendered by the petitioner for Swid-Pearlman Partners, and Southwing Partners.

CONCLUSIONS OF LAW

A. That during the years 1971 and 1972, the petitioner-partnership was not engaged solely in the purchase and sale of real or personal property for its own account and was not exempt from the unincorporated business tax pursuant to sections 703(d) and 703(e) of the Tax Law.

B. That during the years in issue, the activities of the petitioner in the trading of securities for other partnerships did not constitute the purchase and sale of property for its own account and was not exempt from the unincorporated business tax.

C. That during the years in issue, the activities of the petitioner constituted the carrying on of an unincorporated business subject to the unincorporated business tax within the intent and meaning of section 703 of the Tax Law.

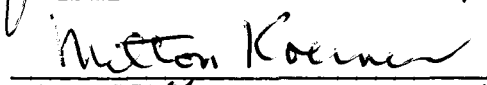
D. That the petition of Stephen Swid and Ken Pearlman, individually and as co-partners doing business under the firm name and style of Swid-Pearlman Management, for the years 1971 and 1972, be and the same is hereby denied.

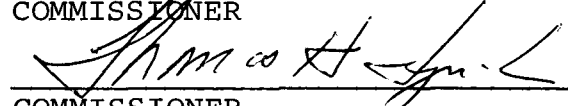
DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER





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

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

Swid-Pearlman Management  
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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,

JOHN J. SOLLECITO  
DIRECTOR

cc: Petitioner's Representative  
Taxing Bureau's Representative

TA-26 (4-76) 25M

**STATE OF NEW YORK**  
**Department of Taxation and Finance**  
**TAX APPEALS BUREAU**

**STATE CAMPUS**  
**ALBANY, N. Y. 12227**

~~Swid-Pearlman Management  
101 Park Avenue  
New York, New York~~

**Not in Compliance**

STATE OF NEW YORK

STATE TAX COMMISSION

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SWID-PEARLMAN MANAGEMENT	:	DECISION
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A. That during the years 1971 and 1972, the petitioner-partnership was not engaged solely in the purchase and sale of real or personal property for its own account and was not exempt from the unincorporated business tax pursuant to sections 703(d) and 703(e) of the Tax Law.

B. That during the years in issue, the activities of the petitioner in the trading of securities for other partnerships did not constitute the purchase and sale of property for its own account and was not exempt from the unincorporated business tax.

C. That during the years in issue, the activities of the petitioner constituted the carrying on of an unincorporated business subject to the unincorporated business tax within the intent and meaning of section 703 of the Tax Law.

D. That the petition of Stephen Swid and Ken Pearlman, individually and as co-partners doing business under the firm name and style of Swid-Pearlman Management, for the years 1971 and 1972, be and the same is hereby denied.

DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER