

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER BAROTZ

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) ~~or Period(s)~~ :
1968, 1969, 1970 and 1971.

State of New York
County of Albany

John Huhn, 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 13th day of April, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Peter Barotz
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Peter Barotz
116 Overlook Road
New Rochelle, New York 10804
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

13th day of April, 1978

[Signature]

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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Tax Law for the Year(s) ~~or Period(s)~~ :
1968, 1969, 1970 and 1971.

State of New York
County of Albany

John Huhn, 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 13th day of April, 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Remo Tinti
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Remo Tinti, Esq.
217 Broadway
New York, New York 10007
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

13th day of April, 1978

M. Walker

John Huhn



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

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

April 13, 1978

Mr. Peter Barotz
116 Overlook Road
New Rochelle, New York 10804

Dear Mr. Barotz:

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 ~~(x)~~ **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,

Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER BAROTZ	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1968, 1969, 1970 and 1971.	:	

Petitioner, Peter Barotz, 116 Overlook Road, New Rochelle, New York 10804, 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 1968 through 1971 (File No. 10941).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 19, 1977 at 2:45 P.M. Petitioner appeared by Remo Tinti, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner maintained regular places of business outside New York State and was, therefore, entitled to allocate the income derived from said places of business to non-New York sources.

II. Whether penalties imposed by the Income Tax Bureau on petitioner pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law for failure to file unincorporated business tax returns were proper.

FINDINGS OF FACT

1. Petitioner, Peter Barotz, timely filed New York State personal income tax returns for 1968, 1969, 1970 and 1971, in which he reported his occupation to be and his business income derived from "business brokerage and consultant." He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's activities constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency on September 29, 1975 in the amount of \$6,460.38 in unincorporated business tax, plus \$2,829.57 in penalty (pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law) and \$1,845.89 in interest for a total due of \$11,135.84.

3. Petitioner conceded that he was engaged in the carrying on of an unincorporated business. He contended that he was entitled to an allocation of a portion of his income to non-New York sources, since he maintained regular places of business in London, England, Milan, Italy, and in Yugoslavia. He also contended that he relied on the advice of his accountant who prepared his tax returns in not filing unincorporated business tax returns.

4. Petitioner was an international business broker and business consultant. He dealt in mergers, acquisitions, corporate restructuring, legal and financial services, as well as providing services as a consultant in the field of international financing. Petitioner was involved in the acquisition by American firms of businesses in England and Italy. He had representation in both countries. Said

representatives found companies in their respective countries that were receptive to being acquired by American corporations. Petitioner finalized the agreed-to deals. He also performed similar services in the United States and worked in cooperation with other brokers with whom he split the earned commissions. Petitioner did not submit documentary evidence to show that he bore all expenses for and maintained regular places of business in England and Italy, nor did he show that his operations in these countries did not constitute joint ventures in isolated deals with other independent participants.

5. Petitioner performed services as a business consultant in Yugoslavia where according to Yugoslavian law, he was not permitted to maintain a regular place of business. Petitioner failed to submit documentary or any substantial evidence to show that he maintained a regular place of business in Yugoslavia.

CONCLUSIONS OF LAW

A. That petitioner did not maintain regular places of business without New York State and that the business transacted in England, Italy and Yugoslavia did not constitute the regular carrying on of business in such places; therefore, all income is allocable to New York in accordance with the meaning and intent of section 707(a) of the Tax Law.

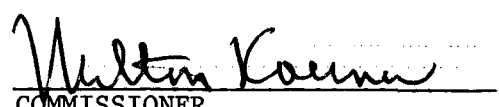
B. That petitioner acted in good faith and all penalties imposed pursuant to sections 685(a) and 685(a)(1) and (2) of the Tax Law are cancelled.

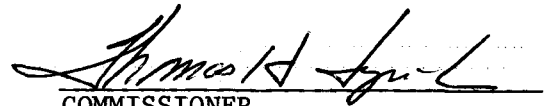
C. That the petition of Peter Barotz is granted only to the extent of cancelling all penalties. The Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued September 29, 1975, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
April 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER