

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CARL FISHER (deceased)
c/o Martin B. Jaffe, Esq.

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of **Unincorporated Business**
Taxes under Article ~~13~~ 23 of the
Tax Law for the Year(s) ~~1966, 1967, 1968 and 1969~~
1966, 1967, 1968 and 1969

AFFIDAVIT OF MAILING

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 20 day of September, 1978, ~~he~~ served the within

Notice of Decision by (certified) mail upon Carl Fisher (deceased)
c/o Martin B. Jaffe, Esq.
(representative of) the petitioner in the within proceeding,

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

as follows: Carl Fisher (deceased)
c/o Martin B. Jaffe, Esq.
119 West 57th Street - Room 1106
New York, New York 10019

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

20 day of September, 1978.







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

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

September 20, 1978

Carl Fisher (deceased)
c/o Martin B. Jaffe, Esq.
119 West 57th Street - Room 1106
New York, New York 10019

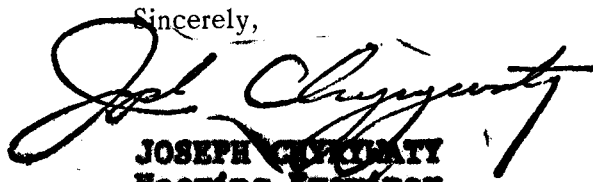
Dear Mr. Jaffe:

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 CHIRIAC
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CARL FISHER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1966, 1967, 1968 and 1969.	:	

Petitioner, Carl Fisher (deceased), c/o Martin B. Jaffe, Esq., 119 West 57th Street (Room 1106), New York, New York 10019, 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 1966, 1967, 1968 and 1969 (File No. 12602).

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 20, 1977 at 1:15 P.M. Petitioner appeared by Martin B. Jaffe, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner's activities during 1966 through 1969 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Carl Fisher (now deceased), filed New York State personal income tax returns for 1966, 1967, 1968 and 1969, in which he reported all income (including wage compensation) as business income. Petitioner relied on his accountant to file any required tax returns. Unincorporated business tax returns were not filed for said years.

2. The Income Tax Bureau contended that petitioner was engaged in the carrying on of an unincorporated business. It issued a Statement of Audit Changes, which also included adjustments for personal income tax purposes. Accordingly, a Notice of Deficiency was issued on October 28, 1974 for \$12,035.04 in personal income and unincorporated business tax, plus \$2,847.67 in penalty and \$4,207.45 in interest, for a total due of \$19,090.16. Petitioner paid the personal income tax shown due on May 1, 1975, without including accrued interest, and the matter involving personal income tax is not here at issue.

3. Petitioner contended that he was employed by Harold Prince, a well-known theatrical producer, in the capacity of general manager. However, the only income derived directly from Harold Prince for services performed in the capacity of general manager were two bonuses for two very successful shows. From time to time, he also worked as company manager for various theatrical entities which he contended was at the behest of Harold Prince. He also contended that he was under the direction

and control of Harold Prince who provided him with office space and secretarial service. Petitioner had no assistants of his own.

4. As producer, Harold Prince was ultimately responsible for all the elements that constituted a Broadway show. He engaged the services of petitioner as general manager for all of his shows which included West Side Story, Fiddler on the Roof, Cabaret, Pajama Game and many others. As general manager, petitioner prepared the budget, helped bring in investors and contracted with authors, composers, lyricists, designers, actors, conductors, arrangers and stagehands for their services. He arranged for the purchase of scenery, property and wardrobe. He arranged to purchase or rent electrical and sound equipment. He arranged for rehearsal space, for the opening of the show and also supervised the operations of the show during its run. He also booked the theatre and watched over the box office operation.

5. Petitioner did not receive any withholding tax statements from Harold Prince, nor were any income taxes and social security taxes withheld from the compensation paid to him by Mr. Prince. Petitioner did not submit satisfactory evidence to show that any direction exercised by Harold Prince over petitioner's day-to-day activities was in the nature of an employer-employee relationship, rather than that of business associates.

6. Petitioner performed services as a company manager for various theatrical entities during the years at issue. He was paid a salary, and a withholding tax statement was issued to petitioner by each entity. Petitioner attached four withholding tax statements to his 1966 tax return, four to his 1967 return, six to his 1968 return and seven statements to his 1969 return. Income taxes and social security taxes were withheld from petitioner's compensation by all entities.

7. As company manager, petitioner counted unsold tickets, checked office statements, was responsible for making up the payroll for the company and for the actors, and arranged for transportation of the show while on the road. Petitioner did not submit satisfactory evidence to show that Harold Prince controlled and directed his day-to-day activities as company manager.

8. Petitioner was not reimbursed for his expenses by Harold Prince, except for some travel expense. Petitioner filed Federal Schedule "C" in which he deducted (from total income) a substantial amount of business expenses. A Federal audit report for the year 1966 indicated that the following Schedule "C" items were disallowed: legal and professional fees - \$1,000.00, publicity and promotion - \$3,404.62, travel and hotels - \$2,005.15, telephone answering service - \$271.23 and theatre tickets - \$1,824.20.

CONCLUSIONS OF LAW

A. That petitioner, Carl Fisher (now deceased), was engaged in the carrying on of an unincorporated business during 1966, 1967, 1968 and 1969, in accordance with the meaning and intent of

section 703(a) of the Tax Law, and was not an employee of Harold Prince in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the income derived from petitioner's activities during the years 1966 through 1969 was subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

C. That petitioner's failure to file unincorporated business tax returns for the years at issue was due to reasonable cause rather than willful neglect; therefore, all penalties imposed pursuant to sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law are cancelled.

D. That the petition of Carl Fisher (deceased) is granted only to the extent that all penalties are cancelled. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued October 28, 1974, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER