

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL R. KRETSCHMER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(8)~~ 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1967 through 1970.

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 20th day of September , 19 78 , she served the within  
Notice of Decision by (certified) mail upon Paul R. Kretschmer

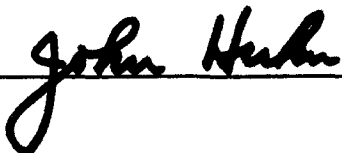
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Paul R. Kretschmer  
80 Post Crossing  
Southampton, New York 11968

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

20th day of September , 19 78

  
\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL R. KRETSCHMER

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)~~ :  
1967 through 1970.

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 20th day of September , 19 78, she served the within  
Notice of Decision by (certified) mail upon Albert Kalter

(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Albert Kalter  
225 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

20th day of September , 19 78

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

September 20, 1978

Paul R. Kretschmer  
80 Post Crossing  
Southampton, New York 11968

Dear Mr. Kretschmer:

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 Chyrywat**  
**Hearing Examiner**

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	:	
PAUL R. KRETSCHMER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967 through 1970.	:	

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Petitioner, Paul R. Kretschmer, 80 Post Crossing, Southhampton, New York 11968, 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 1967 through 1970 (File No. 13497).

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 April 26, 1977 at 9:15 A.M. Petitioner appeared by Albert Kalter, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

#### ISSUES

I. Whether petitioner's activities as a lease and merger broker during the years 1967 through 1970 constituted the carrying on of an unincorporated business, and whether the income reported by him on Federal Schedule "C" for said years was subject to unincorporated business tax.

II. Whether the filing of Federal Schedule "C" for the years 1967 through 1970 constituted the filing of an unincorporated business tax return within the meaning and intent of section 722 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Paul R. Kretschmer, filed New York State personal income tax resident returns for the years 1967 through 1970, on which he listed his occupation as a "lease and merger broker," while reporting his income as business income. He did not file unincorporated business tax returns for said years.

2. On May 20, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner, based on a Statement of Audit Changes dated April 12, 1972 which held that petitioner's business activities constituted the carrying on of an unincorporated business and that, therefore, the income derived from said activities was subject to unincorporated business tax. The Statement also held that an oil loss claimed in 1968 was not related to petitioner's business activities.

3. Petitioner testified that prior to 1967, he was an employee and shareholder of Preferred Leasing Corporation ("Preferred") a family held corporation the principal activity of which was arranging for the lease of equipment and for the sale or merger of businesses. He stated "... the corporation was sold to a leasing company (in 1966) and the right to any other residual income which the corporation had a right to was assigned to me." The income which was assigned to petitioner consisted of installment payments of brokerage commissions payable in 1967 and 1968. These commissions were generated by two transactions made prior to the sale of Preferred and petitioner contended that no action was required on his part to receive said payments.

4. During its audit of petitioner's tax returns, the Income Tax Bureau requested copies of Federal schedules "C" for the years 1967 through 1970. The schedules were received by the Income Tax Bureau on November 17, 1971 and on March 6, 1972. In addition to the aforementioned schedules covering his activities as a lease and merger broker, petitioner submitted a Schedule "C" for 1968, reporting a loss of \$40,608.00 from oil wells.

5. In 1967 petitioner received installment payments of \$39,477.00, which represented the portion of income which he had retained the right to receive for said year. He also received \$356.00 from leasing equipment which he had purchased for this purpose. On the Schedule "C" submitted by petitioner for 1967, he reported gross receipts of \$39,833.00 and claimed deductions for depreciation, sales tax, rent on business property, insurance, legal and professional fees, telephone, dues and subscriptions, postage, office supplies, entertainment, steno services, travel, automobile, food and lodging, gifts, publications and miscellaneous tolls, parking and local transportation, all totaling \$12,486.00.

6. In 1968 petitioner received the final installment of the brokerage commissions he had retained the right to receive in the amount of \$46,368.00. In addition, he received a brokerage fee or commission of \$52,750.00 for arranging the sale of one corporation to another, a commission of \$4,422.00 for preparing leases for leasing companies and rental fee of \$4,270.00 for leasing equipment which he owned. On his Federal Schedule "C" for 1968, petitioner reported gross receipts of \$107,810.00 and claimed deductions similar to those claimed in 1967 in the amount of \$21,271.00.

7. In 1969 petitioner received \$4,270.00 from leasing equipment which he owned. He also received commissions or brokerage fees of \$39,607.00 from three accounts for which he wrote leases. Petitioner reported gross receipts of \$43,877.00 and claimed business expenses of \$9,580.00 on Federal Schedule "C" for 1969.

8. In 1970 petitioner received \$3,223.00 from leasing equipment which he owned. He also received commissions or brokerage fees of \$10,106.00 from three accounts for which he wrote leases. On Federal Schedule "C" he reported gross receipts of \$13,329.00 and business expenses of \$2,936.00 for 1970.

9. During the period 1967 through 1970, petitioner maintained an apartment (which was not his principal residence) at 13 East 55th Street, New York, New York. He testified that this apartment was maintained for personal and business purposes and that it contained a desk and two telephones from which business calls were made. Mail and telephone services were maintained at 663 Fifth Avenue, New York, New York, which address appeared on his stationery. Petitioner established no employer/employee relationship in any of his dealings, but rather conducted his activities as an independent broker. In addition, he made payments to a retirement plan (Keogh Plan) for the self-employed and computed his deduction with respect thereto by including all installment payments and other commissions reported on Schedule "C".

#### CONCLUSIONS OF LAW

A. That petitioner Paul R. Kretschmer's activities during the years 1967 through 1970 constituted the carrying on of an unincorporated business as a lease and merger broker within the meaning and intent of section 703(a) of the Tax Law; therefore, his income from said activities, as well as the installment payments which he received as a result of the sale of Preferred Leasing Corporation, are considered unincorporated business gross income within the meaning and intent of section 705(a) of the Tax Law.

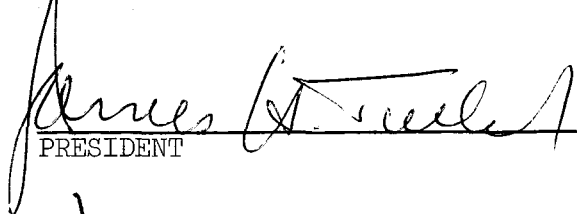
B. That the "Oil Loss" reported by the petitioner for 1968 was not the result of an activity considered to be an unincorporated business within the meaning and intent of section 703(a) of the Tax Law; therefore, the income or loss from this activity is not includable in unincorporated business gross income.

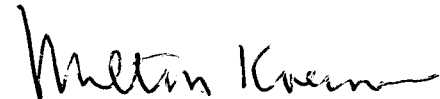
C. That the filing of Federal Schedule "C" does not constitute the filing of an unincorporated business tax return within the meaning and intent of section 722 of the Tax Law.

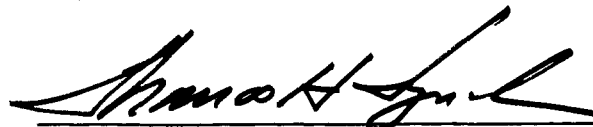
D. That the petition of Paul R. Kretschmer is denied and the Notice of Deficiency issued May 20, 1974 is sustained, together with such penalties (pursuant to section 685(a) of the Tax Law for 1967 and 1968 and sections 685(a)(1) and 685(a)(2) of the Tax Law for 1969 and 1970) and interest as maybe lawfully owing.

DATED: Albany, New York  
September 20, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER