

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
NATHAN LIESER and MURRAY R. FOGEL  
d/b/a LIESER AND FOGEL

AFFIDAVIT OF MAILING

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

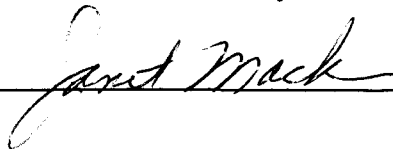
State of New York  
County of Albany

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 17th day of February , 1978 , she served the within  
Notice of Decision by (certified) mail upon Nathan Lieser and Murray R.  
Fogel ~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Nathan Lieser and Murray R. Fogel  
d/b/a Lieser and Fogel  
330 Fifth Avenue  
New York, NY 10001  
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

17th day of February , 1978.

  
\_\_\_\_\_

  
\_\_\_\_\_

STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
NATHAN LIESER and MURRAY R. FOGEL  
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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 17th day of February , 1978 , she served the within  
Notice of Decision by (certified) mail upon Sol M. Seltzer, Esq.

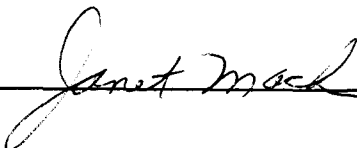
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Sol M. Seltzer, Esq.  
807 Regent Drive  
Westbury, NY 11590

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

17th day of February , 1978.

  
\_\_\_\_\_

  
\_\_\_\_\_



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

**February 17, 1978**

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

**Nathan Lioser and Murray R. Fogel  
d/b/a Lioser and Fogel  
330 Fifth Avenue  
New York, NY 10001**

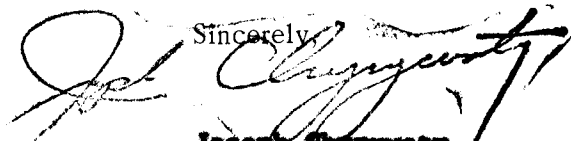
**Gentlemen:**

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(s) **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 TAX COMMISSION

In the Matter of the Petition :  
of :  
NATHAN LIESER and MURRAY R. FOGEL :  
d/b/a LIESER AND FOGEL : 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. :

Petitioners, Nathan Lieser and Murray R. Fogel d/b/a Lieser and Fogel, 330 Fifth Avenue, New York, New York 10001, 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. 13589).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1976 at 1:15 P.M. The petitioners appeared by Sol M. Seltzer, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

Whether petitioners were entitled to allocate their income to sources within and without New York State.

FINDINGS OF FACT

1. During the years 1971 and 1972, petitioners, Nathan Lieser and Murray R. Fogel, conducted business as Lieser and Fogel, a New York partnership.

2. Petitioners filed New York State partnership returns for the years 1971 and 1972. On said returns, petitioners allocated income to sources within and without New York State.

3. On December 23, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioners in the sum of \$2,063.40 for the years 1971 and 1972, upon the grounds that petitioners were not entitled to allocate income to sources within and without New York State and, therefore, unincorporated business tax was due on all of the partnership income.

4. Petitioners maintained an office at 330 Fifth Avenue, New York, New York. Said office was used primarily by petitioner Nathan Lieser.

5. In June of 1971, petitioner Murray R. Fogel moved from Hewlett, New York, to Nashville, Tennessee, and purchased a home there in August of said year.

6. Petitioner Murray R. Fogel maintained an office in his Tennessee home which consisted of a showcase display, desk, business phone and samples. He conducted his activities on behalf of the partnership from his Tennessee home.

7. Petitioners have filed a Certificate of Trade Name in Nashville, Tennessee.

8. Petitioners had a business phone installed in the office maintained by petitioner Murray R. Fogel in his home. Petitioners were listed in the Tennessee telephone directory as Lieser & Fogel and paid business rates on said telephone.

CONCLUSIONS OF LAW

A. That petitioners, Nathan Lieser and Murray R. Fogel d/b/a Lieser & Fogel, maintained a regular place of business without New York State in accordance with 20 NYCRR 207.2. Therefore, petitioners were entitled to allocate income to sources within and without New York State, within the meaning and intent of section 707(a) of the Tax Law and 20 NYCRR 207.1.

B. That the petition of Nathan Lieser and Murray R. Fogel d/b/a Lieser & Fogel is granted and the Notice of Deficiency issued on December 23, 1974 is cancelled.

DATED: Albany, New York  
February 17, 1978

Commissioner Koerner  
dissents

Milton Koerner  
Commissioner

STATE TAX COMMISSION

James A. Suel  
PRESIDENT

COMMISSIONER

James A. Suel  
COMMISSIONER

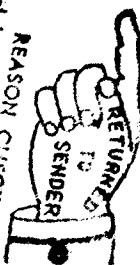
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

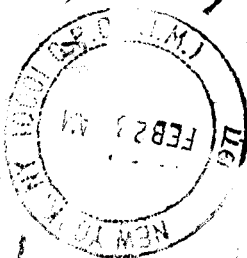
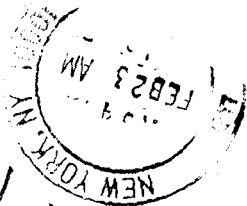


REASON CHECKED

Unclaimed \_\_\_\_\_ Refused \_\_\_\_\_  
 Addressee unknown \_\_\_\_\_  
 Inefficient Address \_\_\_\_\_  
 No such street \_\_\_\_\_ number \_\_\_\_\_  
 No such office in state \_\_\_\_\_  
 Do not remail in this envelope \_\_\_\_\_

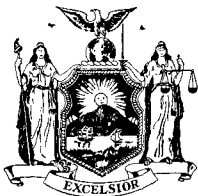
Nathan Lieser and Murray R. Fogel  
 d/b/a Lieser and Fogel  
 330 Fifth Avenue  
 New York, NY 10001

*Unclaimed*



2/27/78





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

February 17, 1978

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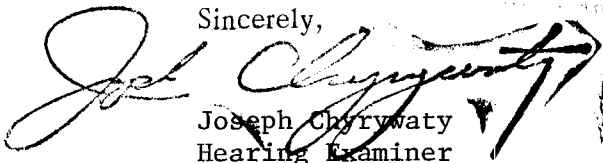
Gentlemen:

Please take notice of the Decision  
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You have now exhausted your right of review at the administrative level. Pursuant to section(§) 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

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ISSUE

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DATED: Albany, New York  
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Commissioner Koerner  
dissents

Milton Koerner  
Commissioner

STATE TAX COMMISSION

James W. Sullivan  
PRESIDENT

Thomas H. Lynch  
COMMISSIONER

COMMISSIONER