

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chasanoff Operating Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Unincorporated Business Tax :
under Article 23 of the Tax Law :
for the Years 1962 - 1972. :

State of New York
County of Albany

Jay Vredenburg, 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 19th day of December, 1979, he served the within notice of Decision by certified mail upon Chasanoff Operating Co., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Chasanoff Operating Co.
123 Grove Ave.
Cedarhurst, NY 11516

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
19th day of December, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chasanoff Operating Co. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Unincorporated Business Tax :
under Article 23 of the Tax Law :
for the Years 1962 - 1972. :

State of New York
County of Albany

Jay Vredenburg, 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 19th day of December, 1979, he served the within notice of Decision by certified mail upon William Slivka the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. William Slivka
Sherman, Feigen & Slivka
292 Madison Ave.
New York, NY 10017

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
19th day of December, 1979.

Joanne Krapp

J. J. Vredenburg

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

December 19, 1979

Chasanoff Operating Co.
123 Grove Ave.
Cedarhurst, NY 11516

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
William Slivka
Sherman, Feigen & Slivka
292 Madison Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CHASANOFF OPERATING COMPANY : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the Years 1962 through 1972.

Petitioner, Chasanoff Operating Company, 123 Grove Avenue, Cedarhurst, New York 11516, 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 1962 through 1972 (File No. 11958).

A formal hearing was held before Neil Fabricant, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 25, 1977 at 2:45 P.M. Petitioner appeared by William Slivka, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the income reported by petitioner was subject to unincorporated business tax.

II. Whether the assessment of tax liability for 1962 through 1972 was barred by the statute of limitations.

FINDINGS OF FACT

1. In 1962, Harris Chasanoff, Michael Chasanoff and Allan Chasanoff (hereinafter "the Chasanoffs") formed and were the sole partners of Chasanoff Operating Company, petitioner herein.

2. Petitioner timely filed New York State partnership returns for the years 1962 through 1972. On said returns, the business activity was shown as "real estate." Although ordinary income was shown on each return, the net income in the schedules for calculation of unincorporated business tax was shown as "none" on each return, and no tax was computed.

3. On September 29, 1975, the Income Tax Bureau issued two notices of deficiency against petitioner, on the grounds that petitioner's activities constituted the carrying on of an unincorporated business, and that the income derived therefrom was subject to unincorporated business tax. One Notice of Deficiency was for the years 1962 through 1969 and the other Notice of Deficiency was for the years 1970 through 1972.

4. Coincidental with the formation of petitioner, and together with Albert Orenstein and Jay Feder, the Chasanoffs formed Inip Company (hereinafter "Inip"). The Chasanoffs owned 55% of Inip. The remaining 45% interest was held by Orenstein and Feder.

5. Inip was formed for the purpose of completing the purchase of a vacant tract of land, and of developing the parcel into a large industrial park. The Chasanoffs were to be the active partners in the venture. Orenstein and Feder were passive investors. All activities associated with the development of the tract were carried out by its active partners, the three Chasanoffs.

6. Petitioner received payments from Inip and reported said payments in its partnership income for 1962 through 1972. Inip had no income in 1962 through and including 1967. Payments to petitioner during those years were made from funds which Inip had obtained from bank loans.

7. Michael J. Chasanoff testified that "The Chasanoffs were managing partners or active partners in a couple of real estate ventures, Inip being the most important one...."

CONCLUSIONS OF LAW

A. That petitioner's activities constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law; thus, the income derived therefrom is subject to unincorporated business tax, pursuant to section 701 of the Tax Law.

B. That the New York State partnership returns filed for the years 1962 through 1972 did not constitute the filing of unincorporated business tax returns, within the meaning and intent of section 722 of the Tax Law. The Notices of Deficiency issued on September 29, 1975 for the years 1962 through 1972 were issued within the statutory period prescribed by sections 722 and 683(c) (1) (A), and are not barred by the statute of limitations.

C. That the petition of Chasanoff Operating Company is denied and the Notice of Deficiency issued September 29, 1975 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

DEC 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER