

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH J. OBERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~and Period(s)~~ 1969 :  
and 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 6th day of April , 1979 , she served the within  
Notice of Decision by (certified) mail upon Kenneth J. Oberman

~~(representative of the)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Kenneth J. Oberman  
234 Garfield Place  
Brooklyn, New York 11215

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)~~  
~~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

6th day of April , 1979

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

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Notice of Decision by (certified) mail upon Grace L. Brodsky, Esq.

(representative of) the petitioner in the within proceeding,  
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as follows: Grace L. Brodsky, Esq.  
c/o Leaf, Kurzman, Deull & Drogin  
730 Third Avenue  
New York, NY 10017  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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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 6, 1979

Kenneth J. Oberman  
234 Garfield Place  
Brooklyn, New York 11215

Dear Mr. Oberman

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

1. Petitioner, Kenneth J. Oberman, and Gretchen W. Oberman, his wife, filed New York State combined income tax returns for 1969 and 1970. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau issued a Notice of Deficiency on December 28, 1973, asserting unincorporated business tax of \$3,058.00, penalty of \$1,234.22 (pursuant to section 685(a)(1) and section 685(a)(2) of the Tax Law) and interest of \$537.38, for a total of \$4,829.60. Petitioner timely filed a petition for redetermination of the deficiency pursuant to section 689(b) of the Tax Law.

3. Petitioner, Kenneth J. Oberman, holds a Bachelor of Arts degree and a Master of Arts degree from the University of California, with a major in economics and econometrics. Petitioner also studied at the University of Stockholm, where he received a certificate in economics.

4. Petitioner participated in a test administered by the National Association of Securities Analysts and Dealers in order to qualify as a supervisory analyst. He also participated in a test given by the New York Stock Exchange for qualifying individuals who wish to become principals in member firms.

5. Petitioner is a member of the New York Society of Securities Analysts and the Econometric Society.

6. Petitioner was employed and became renowned in the investment management and research field during 1958 through 1968.

7. Petitioner was a corporate officer involved in investment management and research for Model Roland and Company, Inc. until July of 1969. At that time, he was elected vice-president of Delphi Management Company ("Delphi"), a wholly-owned subsidiary of El Paso Natural Gas Company ("El Paso"), a corporation doing business in Houston, Texas, with offices in New York City.

8. Petitioner did not render services for Model Roland and Company, Inc. from July 24, 1969 to December 31, 1970, but did receive accrued payments during 1969 and 1970 for services previously rendered.



9. Delphi was incorporated in Delaware on July 14, 1969 for the purpose of specializing in the investment management of corporate pension funds. However, during the period July 24, 1969 through December 31, 1970, Delphi was an inactive corporation engaged in pre-operative activities.

10. Petitioner, an officer of Delphi during its inactive period, was compensated by El Paso for his services as vice-president and investment manager. El Paso also paid him for services rendered as a consultant and did not withhold payroll taxes.

11. Petitioner, a vice-president and investment manager, was required to devote his full working time to Delphi and to do so at the El Paso office located at One Chase Manhattan Plaza, New York, New York. This facility consisted of an office manager and a secretarial staff hired and paid for by El Paso. All office furniture, equipment, supplies, and general operating expenses were paid by El Paso.

12. All expenses incurred by petitioner in his capacity as a corporate officer and investment manager of Delphi were paid or reimbursed by El Paso.

13. El Paso restricted petitioner from performing services for other investment firms; however, it granted him permission to remain as a member of the board of directors of the Dreyfus Leverage Fund and the Dreyfus Group Equity Fund.

14. Petitioner was required to report to, and was subject to, the supervision of the president of Delphi, Mr. Eugene A. Noser, Jr., who was also an assistant vice-president of El Paso. Petitioner was required to adhere to specific office hours and to established vacation schedules.





15. Petitioner was provided with life insurance and medical insurance by El Paso, who paid the premiums through their regular employees' group insurance plan.

16. Delphi commenced operations on January 1, 1971, at which time petitioner was put on its payroll and paid a salary from Delphi funds. Petitioner's duties, status, and conditions of employment remained unchanged until March 11, 1971, when he was elected a director of Delphi.

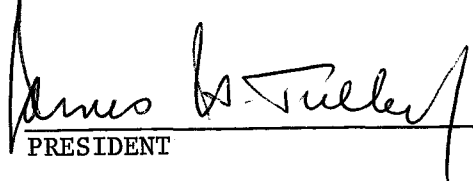
CONCLUSIONS OF LAW

A. That petitioner's activities for Delphi Management Company and El Paso Natural Gas Company during 1969 and 1970 constituted the performance of services as an employee and corporate officer, within the meaning and intent of section 703(b) of the Tax Law; thus, the income derived therefrom is not subject to unincorporated business tax.

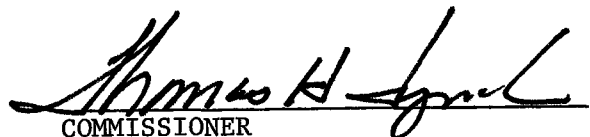
B. That the petition of Kenneth J. Oberman is granted and the Notice of Deficiency issued December 28, 1973 for 1969 and 1970 is cancelled.

DATED: Albany, New York  
April 6, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
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B. That the petition of Kenneth J. Oberman is granted and the Notice of Deficiency issued December 28, 1973 for 1969 and 1970 is cancelled.

DATED: Albany, New York

April 6, 1979

STATE TAX COMMISSION

James W. Tucker  
PRESIDENT

Walter Krum  
COMMISSIONER

                      
COMMISSIONER

S/