

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARTIN AND RACHAEL ROCHMAN

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) ~~xxxxxxx~~ :
1967 & 1968.

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 14th day of February, 1979, he served the within
Notice of Decision by (certified) mail upon Martin & Rachael Rochman

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Martin & Rachael Rochman
Ormond Park Road
Brookville, New York 11010

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)~~
~~xxxxxx~~ 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

14th day of February, 1979

Marilyn J. Papineau

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

February 14, 1979

Martin & Rachael Rochman
Ormond Park Road
Brookville, New York 11010

Dear Mr. & Mrs. Rochman:

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 CHYRYWATY
HEARING EXAMINER

~~Taxing Bureau's Representative~~

Taxing Bureau's Representative

STATE TAX COMMISSION

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 22, 1976 at 1:15 P.M. Petitioner Martin Rochman appeared pro se and for his wife, petitioner Rachael Rochman. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the income received by petitioner Rachael Rochman under the name and style of Rachael Rochman Associates for 1967 and 1968, was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Martin and Rachael Rochman, filed New York State resident returns for 1967 and 1968. Petitioner Rachael Rochman did not file unincorporated business tax returns for said years.

2. On December 23, 1974, the Income Tax Bureau issued two notices of deficiency. One was in the name of Martin and Rachael Rochman and imposed additional personal income tax for 1967, 1968, and also 1969; it was not contested by petitioners. The other Notice of Deficiency was issued against petitioner Rachael Rochman, imposing unincorporated business tax for 1967 and 1968, on the grounds that her activities as a meat broker constituted the carrying on of an unincorporated business. The Income Tax Bureau also made an adjustment to her unincorporated business income for 1967 and 1968, so as to conform to the results of an audit performed by the Internal Revenue Service on petitioners' Federal income tax returns.

3. Petitioner Rachael Rochman filed Federal schedules "C" for 1967 and 1968, reporting business income as a "meat broker" under the business name "Rachael Rochman Associates."

4. Rachael Rochman reported the net income from Rachael Rochman Associates for 1967 and 1968 as her income under the separate column for "wife" on the 1967 and 1968 New York State income tax returns filed for said years.

5. Petitioner Rachael Rochman paid Federal self-employment taxes for 1967 and 1968.

6. During 1962 petitioner Martin Rochman began to receive salaries and commissions earned by him from various principals and made payable to his wife, petitioner Rachael Rochman, under the name of Rachael Rochman Associates. This was done because of outstanding liens and judgments against him, resulting from personal guarantees of notes of a corporation that went into bankruptcy in 1962.

7. During 1967 and 1968, the business income reported by Rachael Rochman Associates was actually a portion of Martin Rochman's income which had been earned by him while employed by Rancher's Packing Corporation as a salesman and general manager.

8. Martin Rochman maintained that his wife, petitioner Rachael Rochman, did not perform any services for Rachael Rochman Associates.

CONCLUSIONS OF LAW

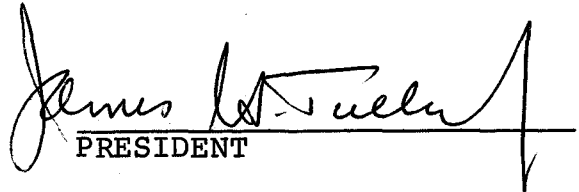
A. That the activities of petitioner Rachael Rochman as a "meat broker" during 1967 and 1968 constituted the carrying on of an unincorporated business, within the meaning of section 703(a) of the Tax Law; thus, the income derived therefrom is subject to unincorporated business tax under section 701(a) of the Tax Law.

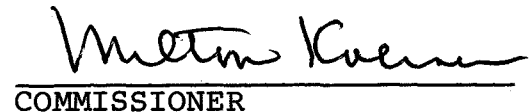
B. That the petition of Martin and Rachael Rochman is denied and the Notice of Deficiency issued December 23, 1974 in the amount of \$1,034.97 is sustained, together with penalties and such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

February 14, 1979


PRESIDENT


COMMISSIONER


COMMISSIONER