

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Harold Friedman :  
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 Year 1970. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

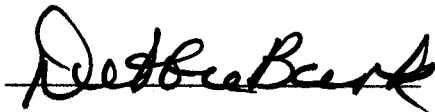
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of September, 1980, he served the within notice of Decision by certified mail upon Harold Friedman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

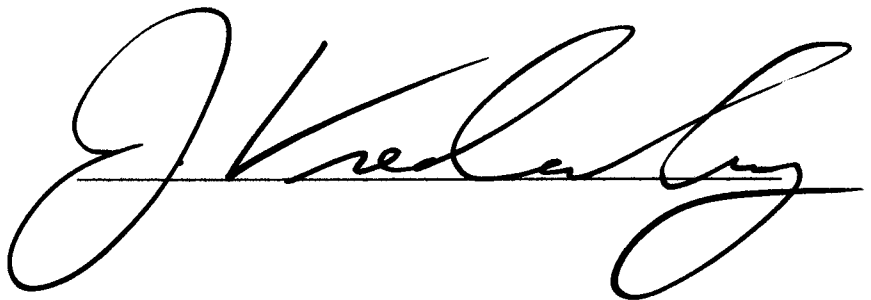
Harold Friedman  
993 Park Ave.  
New York, NY 10028

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  
5th day of September, 1980.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition  
of

Harold Friedman

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 Year 1970. :

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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Stanley Klein the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

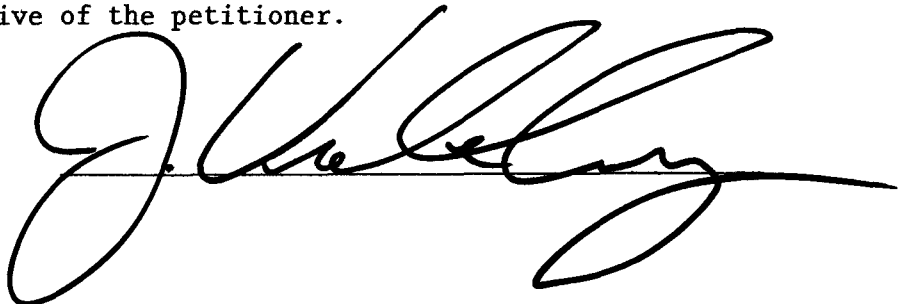
Mr. Stanley Klein  
Brauner, Baron, Rosenzweig & Kligler  
120 Broadway  
New York, NY 10005

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  
5th day of September, 1980.





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

September 5, 1980

Harold Friedman  
993 Park Ave.  
New York, NY 10028

Dear Mr. Friedman:

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  
Stanley Klein  
Brauner, Baron, Rosenzweig & Kligler  
120 Broadway  
New York, NY 10005  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
HAROLD FRIEDMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Year 1970.	:	

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Harold Friedman, 993 Park Avenue, New York, New York, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1970 (File No. 13569).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 17, 1978 at 1:15 P.M. Petitioner appeared by Stanley Klein, Esq. The Audit Division appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUE

Whether option fees and long-term capital gains received by petitioner were subject to unincorporated business tax.

FINDINGS OF FACT

1. On January 28, 1974, the Audit Division issued a Statement of Audit Changes against Harold Friedman on the grounds that option fees were subject to unincorporated business tax and that long-term capital gain was taxable for business purposes. Accordingly, on that date the Audit Division also issued a Notice of Deficiency in the amount of \$3,235.43 plus interest of \$540.74, for a total of \$3,776.17.

2. Petitioner was a general partner in the firm of Abraham & Co. for the year 1970. Abraham & Co. was engaged in the security brokerage and commission business. Prior to the year in issue, Abraham & Co. acquired certain securities which were partnership investments and property of the partnership.

3. During the year in issue, a new individual account with said firm was opened in petitioner's name entitled: "Mr. Harold Friedman Security Account No. 2 C/O Office" in which the firm distributed said securities to. Petitioner contends that "Security Account No. 2" was charged for the cost of said securities and that the account was carried on the partnership accounts just as any unrelated investors account would be. All ownership rights to the property held in "Security Account No. 2" were solely that of petitioners.

4. No evidence was adduced as to the reason for the distribution of said securities to petitioner.

CONCLUSIONS OF LAW

A. That without review of the propriety of the distribution between petitioner Harold Friedman and Abraham & Co., it is clear that petitioner, individually, is not engaged in the conduct of an unincorporated business within the meaning and intent of section 703 of the Tax Law.

B. That the petition of Harold Friedman is granted and the Notice of Deficiency issued January 28, 1974 is cancelled.

DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION

*James A. Tully*  
\_\_\_\_\_  
PRESIDENT

*Thomas D. ...*  
\_\_\_\_\_  
COMMISSIONER

*Francis R. Koenig*  
\_\_\_\_\_  
COMMISSIONER