STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Charles A. & Daniella Newbergh :

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 1970 - 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 5th day of September, 1980, he served the within notice of Decision by certified mail upon Charles A. & Daniella Newbergh, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Charles A. & Daniella Newbergh
235 Garth Rd.
Scarsdale, NY 10583

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.

Petitioner Bank

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

September 5, 1980

Charles A. & Daniella Newbergh
235 Garth Rd.
Scarsdale, NY 10583

Dear Mr. Newbergh:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CHARLES A. NEWBERGH and DANIELLA NEWBERGH	:	DECISION
for Redetermination of a Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Years 1970, 1971 and 1972.	:	

Charles A. Newbergh and Daniella Newbergh, 235 Garth Road, Scarsdale, New York 10583, 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 1970, 1971 and 1972 (File No. 14861).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 22, 1979 at 11:35 A.M. Petitioners appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether a real estate broker is subject to unincorporated business taxes.

II. Whether petitioner Charles A. Newbergh is entitled to allocate his income within and without New York State.

FINDINGS OF FACT

1. Petitioners, Charles A. Newbergh and Daniella Newbergh, filed timely joint New York State resident income tax returns for the years 1970, 1971

and 1972. On the returns, petitioner Charles A. Newbergh listed his occupation as that of real estate broker. Petitioner Daniella Newbergh listed her occupation as housewife.

2. On November 7, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners for $1,986.91 in unincorporated business tax, plus interest, with the explanation that "The income from your activities as a Real Estate Broker is subject to the unincorporated business tax". On May 19, 1975, the Bureau issued a Notice of Deficiency against petitioners in the amount of $1,986.91, plus interest, for the years at issue.

3. Petitioners subsequently filed a timely perfected petition for revision of the deficiency.

4. During the years in question, petitioner Charles A. Newbergh was a licensed New York real estate broker with an office in New York City. Petitioner was also licensed to sell real estate in New Jersey, Maryland and Pennsylvania and engaged in real estate transactions outside of New York State.

5. Mr. Newbergh did not maintain an office in either Pennsylvania or Maryland.

6. Mr. Newbergh did not prove that he received any income from either Maryland or Pennsylvania during the years in question.

7. Mr. Newbergh kept his books for tax purposes on a cash basis.

8. Mr. Newbergh used an office in New Jersey that belonged to a client and relative, but he failed to prove that he maintained a regular place of business in the State of New Jersey.

CONCLUSIONS OF LAW

A. That the activities of a real estate broker do not constitute the practice of a profession within the meaning of section 703(c) of the Tax Law but constitute an unincorporated business under section 703(a) of the Tax Law.

B. That petitioner Charles A. Newbergh has not sustained the burden of proof imposed under sections 722 and 689(e) of the Tax Law to show that he had a regular place of business outside New York. Accordingly, all of said petitioner's unincorporated business gross income is to be allocated to New York State.

C. That petitioner Daniella Newbergh was not engaged in an unincorporated business; accordingly, her name is to be deleted from the Notice of Deficiency.

D. That except as is provided in Conclusion of Law "C", the petition of Charles A. Newbergh and Daniella Newbergh is denied and the Notice of Deficiency is otherwise sustained.

DATED: Albany, New York

SEP 05 1980

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER