

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Isidore Simonovits :  
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 1972-1974. :

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Isidore Simonovits, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Isidore Simonovits  
1451 53rd St.  
Brooklyn, NY 11219

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  
7th day of July, 1980.

Deborah A Bank

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Isidore Simonovits :

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 1972-1974. :

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 7th day of July, 1980, he served the within notice of Decision by certified mail upon Louis Glassman 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. Louis Glassman  
50 Broadway  
New York, NY

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

7th day of July, 1980.

Deborah A Bank

J. Vredenburg

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

July 7, 1980

Isidore Simonovits  
1451 53rd St.  
Brooklyn, NY 11219

Dear Mr. Simonovits:

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  
Louis Glassman  
50 Broadway  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
ISIDORE SIMONOVITS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1972, 1973 and 1974.	:	

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Petitioner, Isidore Simonovits, 1451 53rd Steet, Brooklyn, New York, 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 1972, 1973 and 1974 (File No. 18829).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 7, 1980 at 1:15 P.M. Petitioner appeared by Louis Glassman, Public Accountant. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner's gross income from sales, consummated without the United States, constituted unincorporated business gross income.

II. Whether petitioner maintained a regular place of business, without New York State.

FINDINGS OF FACT

1. On April 11, 1977, the Audit Division issued a Statement of Audit Changes together with a Notice of Deficiency against petitioner, asserting unincorporated business taxes due for the years at issue, in the sum of \$1,556.21, plus interest and penalties. The Notice was issued on the grounds that the

petitioner's income from sales of wholesale diamonds is subject to unincorporated business tax.

2. Petitioner timely filed New York State resident income tax returns for the years at issue. Petitioner did not file unincorporated business tax returns.

3. During the years in issue, petitioner, a domiciliary of New York State, was engaged in the business of purchasing jewelry from estates in New York City. He then wholesales said jewelry in Europe, principally in Austria and Switzerland.

4. Petitioner did not take issue with the fact that he was engaged in an unincorporated business. He argued that the sales were consummated in Europe, therefore, the income generated therefrom did not constitute unincorporated business gross income for New York State purposes. Alternatively, the petitioner argued that if the sales constitute unincorporated business gross income, then an allocation would be required on the grounds that he conducts his business from European hotel rooms which he alleges constitutes a regular place of business without New York State.

#### CONCLUSIONS OF LAW

A. That petitioner's, Isidore Simonovits, gross income from sales consummated in Europe constituted unincorporated business gross income of an unincorporated business in accordance with the meaning and intent of section 705(a) of the Tax Law.

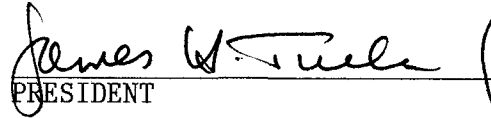
B. That petitioner's, Isidore Simonovits, European hotel rooms did not constitute a regular place of business without New York State; therefore, all income for unincorporated business tax purposes is allocable to New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

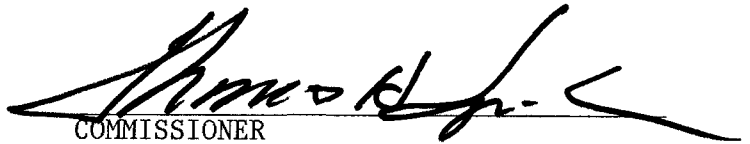
C. That the petition of Isidore Simonovits is denied and the Notice of Deficiency dated April 11, 1977, is sustained.

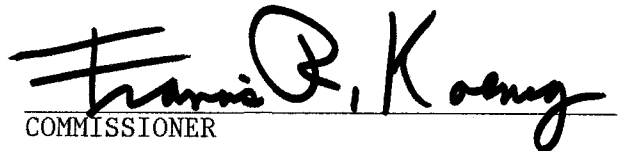
DATED: Albany, New York

STATE TAX COMMISSION

JUL 07 1980

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER