

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Alvin H. Singer :

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 1968-1970. :

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 18th day of July, 1980, he served the within notice of Decision by certified mail upon Alvin H. Singer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alvin H. Singer  
84-49 Elmhurst Ave.  
Elmhurst, NY 11373

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  
18th day of July, 1980.

Deborah A. Bank

J. Vredenburg

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

July 18, 1980

Alvin H. Singer  
84-49 Elmhurst Ave.  
Elmhurst, NY 11373

Dear Mr. Singer:

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

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In the Matter of the Petition  
of  
ALVIN H. SINGER  
for Redetermination of a Deficiency or  
for Refund of Unincorporated Business Tax :  
under Article 23 of the Tax Law for the  
Years 1968, 1969 and 1970. :

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DECISION

Petitioner, Alvin H. Singer, 84-49 Elmhurst Avenue, Elmhurst, New York 11373, 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 1968, 1969 and 1970 (File No. 16169).

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 6, 1980, at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner Alvin H. Singer was engaged in an unincorporated business, and if so, may allocate income to sources outside New York State on the basis that said income was earned from a regular place of business without New York State.

FINDINGS OF FACT

1. On June 28, 1976, the Audit Division issued a Statement of Audit Changes, together with a Notice of Deficiency to petitioner asserting unincorporated business tax due, for the years at issue, for tax due of \$908.69, plus interest and penalties. The deficiency was issued on the grounds that the

income from the petitioner's activities as a real estate broker was 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 for said years.

3. Petitioner Alvin H. Singer was self-employed as a real estate broker during the years in issue. Petitioner was licensed to sell real estate by the State of New York, and was also licensed to sell real estate in the states of New Jersey and Pennsylvania. During the years in question, petitioner's income as a real estate broker consisted entirely of commissions earned on sales of real estate. Sales of real estate from which petitioner received commissions were consummated in New York, New Jersey and Pennsylvania.

4. Petitioner contended that the commissions earned for subject years were attributable to sales, made outside the State of New York, from an office located in Teaneck, New Jersey. The petitioner also contended that the bulk of the real estate sales were consummated from various restaurants located in New Jersey. Therefore, he argued that income earned in New York was de minimis and very little of said income was allocable to New York.

5. The office allegedly used by the petitioner in Teaneck, New Jersey, was maintained in the name of an unrelated third party with whom petitioner, on occasion, shared commissions. The petitioner's name did not appear as a lessee of said office, nor did his business cards and letterheads indicate that he conducted business from said premises. The petitioner did not reimburse the lessee of said premises for any rental expense.

6. For the years in issue, petitioner made deductions on his Federal income tax returns, Schedule C, Form 1040, for the rent for his New York office (which petitioner alleged was used only for receipt of mail), telephone

charges for use of a business phone maintained in his home, depreciation of an automobile and business trips outside of New York State.

CONCLUSIONS OF LAW

A. That petitioner's, Alvin H. Singer, activities as a real estate broker for subject years constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law; that the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

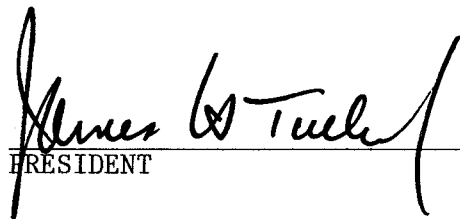
B. That petitioner's, Alvin H. Singer, unincorporated business had no regular place of business without New York State. Therefore, the income realized thereon was not subject to an allocation pursuant to section 707(a) of the Tax Law.

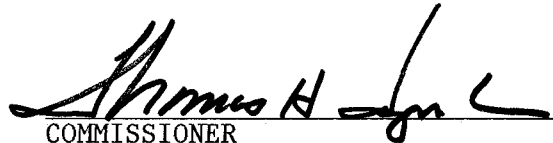
C. That the petition of Alvin H. Singer is denied and the Notice of Deficiency issued on June 28, 1976 is sustained, together with such additional interest and penalty as may be lawfully owing.

DATED: Albany, New York

JUL 18 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER