

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Arthur Vogel

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 & 1973. :

State of New York
County of Albany

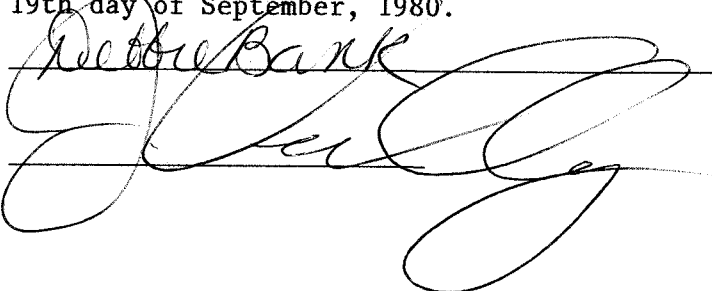
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Arthur Vogel, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur Vogel
2900 N.W. 23rd Ct.
Boca Raton, FL 33431

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
19th day of September, 1980.



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Arthur Vogel :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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State of New York
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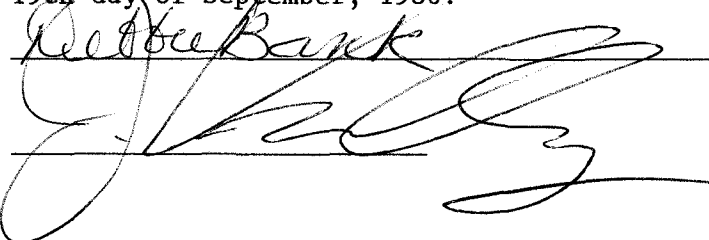
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon David Sussman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. David Sussman
Reminick, Aarons & Co.
575 Madison Ave.
New York, NY 10022

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
19th day of September, 1980.



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

September 19, 1980

Arthur Vogel
2900 N.W. 23rd Ct.
Boca Raton, FL 33431

Dear Mr. Vogel:

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
David Sussman
Reminick, Aarons & Co.
575 Madison Ave.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Arthur Vogel, 2900 North West 23rd Court, Boca Raton, Florida 33431, 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 and 1973 (File No. 18146).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 3, 1980 at 9:00 A.M. Petitioner, Arthur Vogel, appeared with David Sussman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Arthur Vogel, filed New York State income tax resident returns for the years 1972 and 1973, on which he reported earned income from his real estate activities as follows:

	<u>1972</u>	<u>1973</u>
Salary	\$ 9,000.00	\$10,800.00
Other Income	52,631.83	
Business Income		40,680.00

Petitioner did not file unincorporated business tax returns for the years 1972 and 1973 upon his accountant's advice.

2. On January 24, 1977, the Audit Division issued a Notice of Deficiency in the sum of \$6,781.49 for the years 1972 and 1973, along with an explanatory Statement of Audit Changes, on which the "other income" of \$52,631.83 and the "business income" of \$40,680.00 (supra) was held subject to the unincorporated business tax. In addition, penalties pursuant to section 685(a)(1) and 685(a)(2) of the Tax Law were imposed.

3. Petitioner, Arthur Vogel, is a licensed real estate broker and was retained by the Sy Vogel Realty Company ("Company"), a New York firm owned and operated by petitioner's brother. The Company was primarily engaged in the purchase and sale of undeveloped land.

4. Petitioner's duties consisted of soliciting builders and developers for the purpose of selling or acquiring real property. Petitioner was compensated on a salary basis (subject to the withholding of F.I.C.A. tax) plus commissions.

5. Petitioner was provided with office and secretarial services by the Company. Although he had no fixed working hours, petitioner was required to report all his activities and whereabouts to the Company on a daily basis. All sales and acquisitions were subject to the approval of the Company.

6. Since 1962, petitioner maintained an oral agreement with the Company; whereby he agreed not to represent other firms and to devote all of his working time and efforts to the Company. During the years 1972 and 1973, petitioner solely represented the Company and earned a salary, plus the commission income at issue, exclusively from them.

7. Petitioner was occasionally allowed to invest in the purchase of undeveloped land. At such time, petitioner became part owner of a particular parcel, along with his brother and other investors. Petitioner, his brother, and the other investors shared in the cost, maintenance and subsequent profit (or loss) of the property in accordance with their percentage of ownership. However, petitioner's participation in these investments was limited to the extent allowed by the Company.

8. The Audit Division recommended that the penalties imposed, pursuant to section 685(a) (1) and 685(a) (2) of the Tax Law be cancelled for reasonable cause.

CONCLUSIONS OF LAW

A. That sufficient direction and control was exercised by the Sy Vogel Realty Company so as to cause petitioner, Arthur Vogel, to become its employee within the meaning and intent of section 703(b) of the Tax Law; and accordingly, the income derived therefrom is not subject to the unincorporated business tax.

B. That the petition of Arthur Vogel is granted and the Notice of Deficiency issued January 24, 1977 for the years 1972 and 1973 is cancelled.

DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

[illegible]

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