

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Estate of William W. Kamm :  
(Estelle Back & Howard Back, Executors) :  
: 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 Fiscal Year Ending 6/30/76. :

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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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Estate of William W. Kamm, (Estelle Back & Howard Back, Executors) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of William W. Kamm  
(Estelle Back & Howard Back, Executors)  
c/o Dreyer & Traub  
90 Park Ave.  
New York, NY 10016

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  
25th day of September, 1981.

*Annie A. Hayden*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Estate of William W. Kamm :  
(Estelle Back & Howard Back, Executors) :  
: 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 Fiscal Year Ending 6/30/76. :

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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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Stanley A. Ross the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley A. Ross  
Edward Eisaacs & Co.  
380 Madison Ave.  
New York, NY 10017

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  
25th day of September, 1981.

*Ann A. Haglund*

*J. Vredenburg*

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

September 25, 1981

Estate of William W. Kamm  
(Estelle Back & Howard Back, Executors)  
c/o Dreyer & Traub  
90 Park Ave.  
New York, NY 10016

To the Executors:

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 A. Ross  
Edward Eisaacs & Co.  
380 Madison Ave.  
New York, NY 10017  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ESTATE OF WILLIAM W. KAMM	:	DECISION
(Estelle Back and Howard Back, Executors)	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for Fiscal	:	
Year Ending June 30, 1976.	:	

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Petitioner, Estate of William W. Kamm, Estelle Back and Howard Back, Executors, c/o Dreyer & Traub, 90 Park Avenue, New York, New York 10016, filed a petition for a redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the fiscal year ending June 30, 1976 (File No. 21269).

A formal hearing was held before Robert A. Couze, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 10, 1980 at 9:25 A.M. Petitioner appeared by Stanley A. Ross, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether commissions earned by decedent, a real estate broker, prior to his death, but paid to his estate subsequent to his death, are subject to unincorporated business tax.

FINDINGS OF FACT

1. William W. Kamm, a real estate broker, died July 29, 1975. Prior to his death, he earned \$165,000.00 in commissions from his real estate business which did not become payable to him during his life time but became payable

subsequent to his death. The commissions were paid to his estate and were reported on the New York State income tax fiduciary return which was filed by Howard Back, executor, for the fiscal year ending June 30, 1976.

2. On January 30, 1978 the Audit Division issued a Notice of Deficiency against petitioner asserting New York State unincorporated business tax for the fiscal year ending June 30, 1976 in the sum of \$7,951.00, plus interest, on the aforementioned commission. No penalty was asserted.

3. There is no evidence that the receipt of the aforementioned income was part of any liquidation process. In fact, the evidence shows that all that petitioner's executors had to do was accept the income when it became due and payable.

CONCLUSIONS OF LAW

A. That the commission income paid to petitioner's estate subsequent to his death, which was not due to the liquidation of the unincorporated business, is not subject to unincorporated business tax (Fishel v. State Tax Commission, 48 A.D. 2d 381).

B. That accordingly the petition herein is granted and the Notice of Deficiency is cancelled.

DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER