

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Douglas L. Netter, Jr. :

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 1966 - 1969. :

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 February, 1981, he served the within notice of Decision by certified mail upon Douglas L. Netter, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Douglas L. Netter, Jr.
1115 Beverly Drive
Beverly Hills, CA 90210

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 February, 1981.

Connie A. Hagelund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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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 5th day of February, 1981, he served the within notice of Decision by certified mail upon George Hirschhorn 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. George Hirschhorn
Land Title Bldg., Suite 634, Broad & Chestnut St.
Philadelphia, PA 19110

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
5th day of February, 1981.

Cornelia A. Haglund

J. Vredenburg

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

February 5, 1981

Douglas L. Netter, Jr.
1115 Beverly Drive
Beverly Hills, CA 90210

Dear Mr. Netter:

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
George Hirschhorn
Land Title Bldg., Suite 634, Broad & Chestnut St.
Philadelphia, PA 19110
Taxing Bureau's Representative

STATE TAX COMMISSION

Formal hearings were held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 17, 1978 and July 19, 1978. The petitioner appeared by George Hirschhorn, C.P.A. and Jay S. Goodman, Esq. The Audit Division appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. and Irwin Levy, Esq., of counsel).

ISSUES

I. Whether the activities of the petitioner during the years 1966 through 1968 constituted the carrying on of an unincorporated business subject to unincorporated business tax.

II. Whether the salary income received by the petitioner during the year 1969 was integrated with his business income and thus subject to unincorporated business tax.

III. Whether during the years in issue the petitioner was an employee and thus not subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, L. Douglas Netter, Jr., and his wife filed forms IT-208 (New York State combined income tax returns for resident married persons filing a joint Federal return who elect to file separate New York State returns) for the years 1966, 1967 and 1968. Petitioner filed unincorporated business tax returns for the years 1966, 1967 and 1968 on which he indicated that he was not subject to unincorporated business tax, but exempt therefrom.

2. On April 13, 1970 the Income Tax Bureau issued a statement of audit changes against the petitioner imposing unincorporated business tax in the amount of \$4,861.88 plus interest and penalty for the years 1966, 1967 and 1968. Accordingly, a Notice of Deficiency was issued against the petitioner on April 13, 1970 for the aforementioned amount for the years 1966, 1967 and 1968. Petitioner timely filed a petition with respect to the aforementioned deficiency.

3. L. Douglas Netter, Jr. and his wife also filed a form IT-208 for the year 1969. Petitioner filed an unincorporated business tax return for said year on which he indicated that he was exempt from and not subject to unincorporated business tax. Attached to the return petitioner included wage and tax statements from Fairway Productions, Inc. ("Fairway") and Metro Goldwyn Mayer, Inc. ("MGM").

4. On February 26, 1973 the Income Tax Bureau issued a Statement of Audit Changes against petitioner for the year 1969 imposing unincorporated business tax in the amount of \$2,625.76, plus interest and accordingly, issued a Notice of Deficiency therefor. Petitioner timely filed a petition with respect to said deficiency.

5. For the years 1966, 1967 and 1968, the petitioner received income from multi-principals during each of said years either as a film producer or

film producer's representative with respect to the distribution of films. None of the principals, during each of the aforementioned years, deducted withholding or social security taxes from the compensation paid him. The petitioner on his Federal income tax returns for the years 1966, 1967 and 1968 reported self-employment tax.

6. The petitioner submitted into evidence a letter addressed to him dated August 4, 1967 from Fairway consisting of 17 type-written pages confirming the agreement between petitioner and Fairway. Fairway agreed to employ petitioner to render services as a production executive, producer and/or executive producer in connection with feature motion picture photoplays. As a production executive, he was to review and select published or unpublished stories, books, plays, screenplays and recommend same to Fairway for acquisition, development and use in the production of theatrical motion pictures, television programs, stage plays and other entertainment vehicles. In addition, petitioner also agreed to render services for Fairway as a producer's sales representative (the same type of services as required in connection with his employment as a sales representative for Fairway's parent corporation, Jalem Productions, Inc., under an agreement dated August 4, 1967). During the first year of the contract term, petitioner was permitted to render services for himself or for other persons or firms as a producer's sales representative and as an officer of Douglas Netter, Inc., a small business investment corporation. Petitioner was to receive as compensation \$50,000.00 a year with gradual yearly increases plus 20 percent of net production fee of Fairway with respect to the first participating production, plus sums equal to 33 1/3 percent of the company's shares of the net profits derived from the distribution and exhibition of the applicable participating production.

7. Fairway did not reimburse petitioner for all of his expenses. He was reimbursed for a portion of his travel expenses to California. The other business expenses of petitioner which were substantial were borne by petitioner himself. None of the other principals compensated petitioner for his business expenses.

8. For 1969, in addition to salary income which he received from Fairway and MGM, petitioner also reported additional business income on Schedule C in the amount of \$31,212.00. He claimed unreimbursed business expenses in the amount of \$21,202.00

9. During the period 1965 through 1967 petitioner rendered services for Meadway Productions, Inc. as a producer's representative in connection with the commercial exploration of certain motion pictures produced by said company. Columbia Pictures, located at 711 Fifth Avenue, New York City, acted as Meadway's distributor. Petitioner used an office in the Columbia building which was paid for by Columbia and charged to the productions.

10. There was no agreement among petitioner's principals as to the division of his time or efforts on their behalf.

11. During the years in issue, the petitioner employed and paid for the services of a full-time secretary.

CONCLUSIONS OF LAW

A. That the petitioner has failed to establish that during the years in issue the principals whom he represented (other than Fairway and MGM for 1969) exercised substantial supervision or control over his activities or over his time, so as to constitute an employer-employee relationship within the intent and meaning of section 703(b) of the Tax Law.

B. That during the years in issue, aside from petitioner's activities on behalf of Fairway and MGM, during 1969 petitioner was an independent contractor

carrying on an unincorporated business subject to unincorporated business tax within the intent and meaning of section 703(a) of the Tax Law. (Matter of Seifer v. State Tax Commission, 58 A.D.2d 726; Matter of Feld v. Gallman, 41 A.D.2d 882; Matter of Naroff v. Tully, 55 A.D.2d 755.)

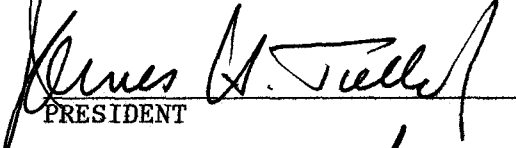
C. That petitioner was an employee of Fairway and MGM for 1969. However, the services performed by petitioner for Fairway and MGM as an employee during the year 1969 constituted part of a business regularly carried on by him within the intent and meaning of section 703(b) of the Tax Law.

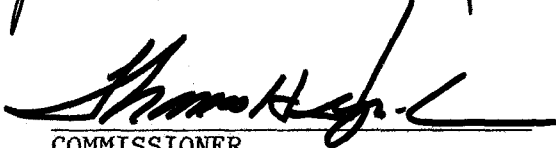
D. That the petitions of L. Douglas Netter, Jr. are hereby denied and the notices of deficiency dated April 13, 1970 and February 26, 1973 are sustained.


DATED: Albany, New York

FEB 05 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER