

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Milton Aronauer	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Unincorporated	:	
Business Tax under Article 23 of the Tax Law for	:	
the Year 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 14th day of December, 1982, he served the within notice of Decision by certified mail upon Milton Aronauer, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

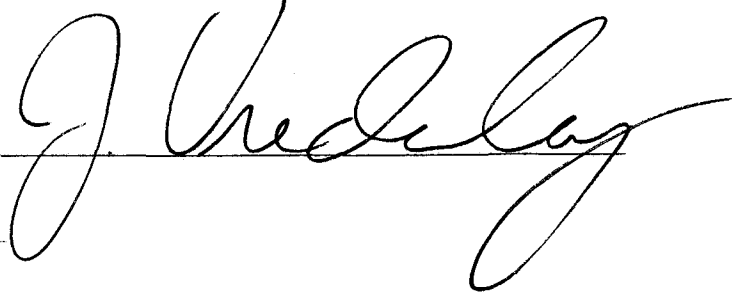
Milton Aronauer  
4 Summit Ave.  
Mt. Vernon, NY 10550

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  
14th day of December, 1982.

  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Milton Aronauer :

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 Year 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 14th day of December, 1982, he served the within notice of Decision by certified mail upon Allan Kritzer the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Allan Kritzer  
Allan Kritzer & Co.  
381 Sunrise Hwy.  
Lynbrook, NY 11563

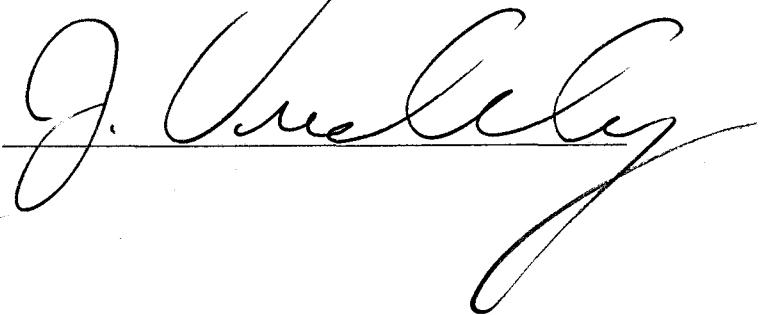
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
14th day of December, 1982.



AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

December 14, 1982

Milton Aronauer  
4 Summit Ave.  
Mt. Vernon, NY 10550

Dear Mr. Aronauer:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Allan Kritzer  
Allan Kritzer & Co.  
381 Sunrise Hwy.  
Lynbrook, NY 11563  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
	:	
of	:	
	:	
MILTON ARONAUER	:	DECISION
	:	
for Redetermination of a Deficiency or Refund	:	
of Unincorporated Business Tax under Article	:	
23 of the Tax Law for the Year 1974.	:	

---

Petitioner, Milton Aronauer, 4 Summit Avenue, Mount Vernon, New York 10550, filed a petition for redetermination or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1974 (File No. 28867).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the office of the State Tax Commission, Two World Trade Center, New York, New York on December 14, 1981 at 2:45 P.M. Petitioner appeared by Allan Kritzer, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin A. Cahill, Esq., of counsel).

ISSUE

Whether net profit from the sale of real property, acquired through defaults related to tax lien certificates held, and related interest income is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Milton Aronauer, timely filed a New York State Income Tax Resident Return for the year 1974 wherein he reported interest income of \$10,124.00 and gain from the sale and exchange of capital assets of \$41,238.00. He did not file an unincorporated business tax return for said year.

2. On May 15, 1979, the Audit Division issued a Statement of Audit Changes to the petitioner wherein it held that gains and losses resulting from the sale of real property have been sufficiently extensive to constitute the carrying on of a trade or business. As such, this income and related interest income (less related expenses) were deemed subject to unincorporated business tax. Accordingly, a Notice of Deficiency was issued against the petitioner on September 27, 1979, asserting unincorporated business tax of \$1,575.69, plus interest of \$596.30, for a total due of \$2,171.99.

3. For the past thirty years petitioner, Milton Aronauer, has purchased tax lien certificates purportedly for the interest income. Petitioner's representative claimed that tax lien certificates purchased earned the purchaser interest income ranging from 6 percent to 20 percent. If, at the end of a period ranging from two to three years, the tax lien and/or the interest income has not been paid, the purchaser of the tax lien certificate can then file papers to secure the deed to the property subject to the lien. When petitioner would secure a deed to a property he would first attempt to rent the property. If the property was unrentable, and if someone approached the petitioner to purchase the property, he would sometimes sell the property. It is claimed that petitioner never advertised his properties for sale nor did he give a listing to a real estate broker. Petitioner was not at the hearing to testify.

4. During 1974, petitioner, Milton Aronauer, sold twenty-two pieces of real property which he acquired through the purchase of tax lien certificates.

5. Petitioner reported as miscellaneous itemized deductions "expenses incurred in connection with earning income and not reimbursed" on his State and Federal income tax returns. The following is a list of such expenses:

<u>EXPENSES</u>	<u>AMOUNT</u>
Automobile Expense	\$ 3,463.00
Telephone Expense	2,040.00
Accounting Fees	2,150.00
Legal Fees	1,554.00
Office Supply Expense	1,886.00
Dues and Subscriptions	119.00
Travel and Entertainment Expenses	5,510.00
Office Rent	1,404.00
Bank Service Charges	56.00
Miscellaneous Expenses	990.00
Insurance (auto, fire & theft)	1,685.00
Wages (secretary)	2,544.00
Payroll Taxes	397.00
Advertising	111.00
Outside Services	396.00
Depreciation on Furniture, Fixtures & Automobile	1,949.00
Total	<u>\$26,254.00</u>

6. Tax lien certificates were purchased by petitioner from taxing authorities within the State of New York and Pennsylvania. Of the twenty-two pieces of real property sold, some of the real property was located in Pennsylvania.

7. Petitioner claimed that a portion of the interest income included in the Notice of Deficiency was from bonds, mortgages, and bank accounts. However, no evidence was submitted to substantiate this.

#### CONCLUSIONS OF LAW

A. That section 703(d) of the Tax Law provides the following:

(d) Purchase and sale for own account -- An individual or other unincorporated entity, except a dealer holding property primarily for sale to customers in the ordinary course of his trade or business, shall not be deemed engaged in an unincorporated business solely by reason of the purchase and sale of property for his own account, but this subsection shall not apply if the unincorporated entity is taxable as a corporation for Federal income tax purposes. (Emphasis added)

B. That petitioner, Milton Aronauer, has failed to sustain his burden of proof imposed by section 722 and 689(e) of the Tax Law to show that he was not a dealer in real estate holding such property for sale to customers in the ordinary course of his trade or business. Accordingly, the income earned from

his activities as a dealer in real estate is subject to unincorporated business tax.

C. That the interest income realized from the purchase of tax lien certificates was so interrelated and interconnected with petitioner's real estate activities that it was properly includable in his business gross income pursuant to section 705(a) of the Tax Law.

D. That section 707(e) of the Tax Law states that:

"Special rules for real estate. --Income and deductions from the rental of real property, and gain and loss from the sale, exchange or other disposition of real property, shall not be subject to allocation under subsection (b), (c), or (d), but shall be considered as entirely derived from or connected with the state in which such property is located."

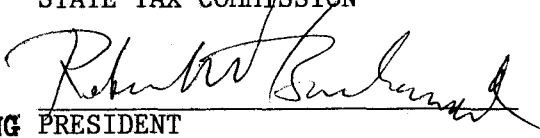
The Audit Division is directed to deduct from the total sales, all sales related to property located in Pennsylvania.


E. That the petition of Milton Aronauer is granted to the extent indicated in Conclusion of Law "D", supra; and that, except as so granted, the petition is in all other respects denied.


DATED: Albany, New York

DEC 14 1982

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER