

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Irving Druckman and Son  
d/b/a Little Rock Furniture

:

:

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 & 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 26th day of November, 1982, he served the within notice of Decision by certified mail upon Irving Druckman and Son, d/b/a Little Rock Furniture the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Irving Druckman and Son  
d/b/a Little Rock Furniture  
200 Lexington Ave.  
New York, NY 10016

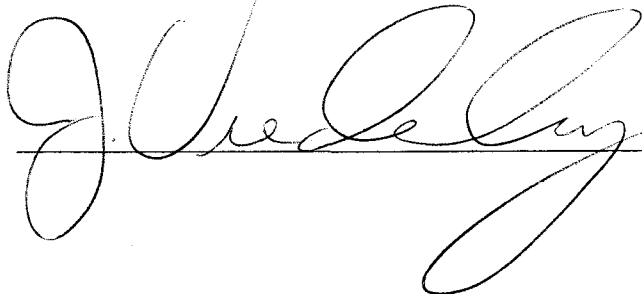
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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  
26th day of November, 1982.



TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Irving Druckman and Son :  
d/b/a Little Rock Furniture :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
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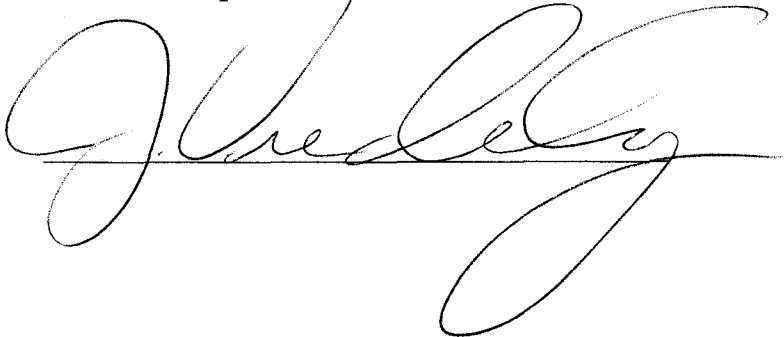
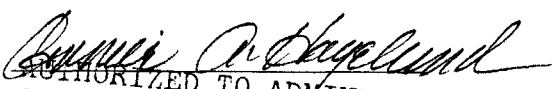
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 26th day of November, 1982, he served the within notice of Decision by certified mail upon David Kipper the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

David Kipper  
5 E. 57th St.  
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  
26th day of November, 1982.

  
  
AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

November 26, 1982

Irving Druckman and Son  
d/b/a Little Rock Furniture  
200 Lexington Ave.  
New York, NY 10016

Gentlemen:

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  
David Kipper  
5 E. 57th St.  
New York, NY 10022  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
IRVING DRUCKMAN & SON	:	
D/B/A LITTLE ROCK FURNITURE	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1972,	:	
1973 and 1974.	:	

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Petitioner, Irving Druckman & Son d/b/a Little Rock Furniture, c/o David L. Kipper, Esq., 5 East 57th Street, New York, New York, 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, 1973 and 1974 (File No. 19415).

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 May 20, 1981 at 1:15 P.M. Petitioner appeared by David L. Kipper, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry Bresler, Esq., of counsel).

ISSUES

I. Whether, for purposes of computing unincorporated business taxes due, Irving Druckman & Son, d/b/a Little Rock Furniture, is entitled to allocate a portion of its income to out-of-state sources.

II. Whether commissions received and reported by Michael Druckman from Pulaski Furniture Company of New York, Inc. should have been reported or received by petitioner.

FINDINGS OF FACT

1. For the tax years 1972, 1973 and 1974 petitioner was a partnership engaged in business as a "Furniture Manufacturers Representative" with offices located at 200 Lexington Avenue, New York, New York 10016.

2. For the tax years 1972, 1973 and 1974 the petitioner filed "New York State Income and Unincorporated Business Tax Partnership Return[s]" (IT-204). For 1972, petitioner signed a "Consent Fixing Period of Limitation Upon Assessment of Personal Income and Unincorporated Business Taxes" until April 15, 1977.

3. Subsequent to a field audit conducted by the Income Tax Bureau of the petitioner's business operations for the tax years 1972, 1973 and 1974, adjustments were made to the "Partnership Returns" (IT-204) for the respective tax years which were reflected in the timely "Notice of Deficiency" issued April 11, 1977 asserting a deficiency in the base amounts of unincorporated business tax due, as follows: 1972 - \$2,264.13; 1973 - \$2,988.43; 1974 - \$2,839.24.

4. For tax year 1972, petitioner's unincorporated business tax due was attributable to the following adjustments:

(a) The inclusion of business income of Michael Druckman a one-third (1/3) partner of petitioner in the amount of \$18,372.00 in that commissions received by Michael Druckman from Pulaski Furniture Corporation as a manufacturer's representative were considered income of the partnership in that the petitioner ("Partnership") was the manufacturer's representative for Pulaski Furniture Corporation.

(b) The inclusion of \$3,000.00 unsubstantiated business expenses and additional automobile expenses of Michael Druckman.

(c) The inclusion of personal travel and entertainment of the individual partners of the petitioner in the amount of \$3,006.94.

(d) The inclusion of personal automobile expenses of the individual partners of the petitioner including insurance, in the amount of \$567.00.

(e) The inclusion of personal telephone expenses of the individual partners of the petitioner in the amount of \$200.00.

(f) The denial of an allocation of income to sources outside New York.

5. For tax year 1972 petitioner reported that Taxable Business Income within Schedule U-D on page 1 of the "Partnership Return" (IT-204) on line 30 thereof, was \$40,351.51.

6. For the tax year 1972 the petitioner's allocation of income as computed within Schedule U-C on page 4 of the "Partnership Return" (IT-204) was disallowed in its entirety as it was asserted petitioner maintained no regular place of business without the State of New York resulting in an adjustment of \$16,020.06.

7. That as a consequence of the foregoing, the corrected taxable business income of petitioner's unincorporated business for the tax year 1972 was determined to be \$81,517.51 which yielded an unincorporated business tax in the amount of \$4,483.46, less \$2,219.33 previously paid, resulting in a deficiency in unincorporated business tax due in the amount of \$2,264.13.

8. That for tax year 1973, petitioner's unincorporated business tax due was attributable to the following adjustments:

(a) The inclusion of business income of Michael Druckman, a one-third (1/3) partner of petitioner in the amount of \$16,392.00 in that commissions received by Michael Druckman from Pulaski Furniture Corporation, as its manufacturer's representative, were considered income of the partnership in that the petitioner (Partnership) was the manufacturer's representative for Pulaski Furniture Corporation.

(b) The inclusion of \$3,000.00 unsubstantiated business expenses and additional automobile expenses of Michael Druckman.

(c) The inclusion of personal travel and entertainment expenses of the individual partners of the petitioner in the amount of \$719.70.

(d) The inclusion of personal automobile expenses of the individual partners of the petitioner including insurance, in the amount of \$567.00.

(e) The inclusion of personal telephone expenses of the individual partners of the petitioner in the amount of \$200.00.

(f) The denial of an allocation of income to sources outside New York.

9. That for the tax year 1973 the petitioner reported that taxable business income within Schedule U-D on page 1 of the "Partnership Return" (IT-204) on line 30 thereof, was \$46,686.00.

10. That for the tax year 1973 the petitioner's allocation of income as computed within Schedule U-C on page 4 of the "Partnership Return" (IT-204) was disallowed in its entirety as it was asserted petitioner maintained no regular place of business without the State of New York resulting in an adjustment of \$19,805.00.

11. That as a consequence of the foregoing, the corrected taxable business income of petitioner's unincorporated business for the tax year 1973 was determined to be \$101,026.00, resulting in unincorporated business tax of \$5,556.43, less \$2,568.00 previously paid, leaving a deficiency in unincorporated business tax due in the amount of \$2,988.43.

12. That for tax year 1974, petitioner's unincorporated business tax due was attributable to the following adjustments:

(a) The inclusion of business income of Michael Druckman, a one-third (1/3) partner of petitioner in the amount of \$27,792.00, in that commissions received by Michael Druckman from Pulaski Furniture Corporation, as its manufacturer's representative, were considered income of the partnership in that the petitioner (Partnership) was the manufacturer's representative for Pulaski Furniture Corporation.

(b) The inclusion of \$3,000.00 unsubstantiated business expenses and additional automobile expenses of Michael Druckman.

(c) The inclusion of personal travel and entertainment expenses of the individual partners of the petitioner in the amount of \$800.00.

(d) The inclusion of personal automobile expenses of the individual partners of the petitioner including insurance, in the amount of \$567.00.

(e) The inclusion of personal telephone expenses of the individual partners of the petitioner in the amount of \$200.00.

(f) The denial of an allocation of income to sources outside New York.

13. That for the tax year 1974 the petitioner reported that taxable business income within Schedule U-D on page 1 of the "Partnership Return" (IT-204) on line 30 thereof, was \$47,349.00.

14. That for the tax year 1974 the petitioner's allocation of income as computed within Schedule U-C on page 4 of the "Partnership Return" (IT-204) was disallowed in its entirety as it was asserted petitioner maintained no regular place of business without the State of New York resulting in an adjustment of \$19,260.00.

15. That as a consequence of the foregoing, the corrected taxable business income of petitioner's unincorporated business for the tax year 1974 was deemed to be \$98,968.00 arriving at unincorporated business tax in the amount of \$5,443.24, less \$2,604.00 previously paid, resulting in a deficiency in unincorporated business tax due in the amount of \$2,839.24.

16. The grounds upon which the petitioner relied in making its claim for relief are as follows:

- (a) with respect to the disallowance of the petitioner's allocation of a portion of its income to out-of-state sources, it alleged that the income was generated from out-of-state sales from out-of-state facilities (in Virginia and in North Carolina).
- (b) with respect to the lumping of Michael Druckman's income with that of petitioner, it alleged that there was no basis for such action and that the Audit Division was arbitrary and capricious in doing so.



17. The petitioner herein consisted of two partners. Michael Druckman, a resident of New York State for the years in issue, owned a one-third interest and his father, Irving Druckman, owned the other two-thirds interest. Its sales staff consisted of the two partners and 4 or 5 other salesmen.

18. Petitioner was a manufacturer's representative for Pulaski Furniture Corporation; a company it interchangeably referred to as Pulaski Furniture Corporation of Virginia and/or Pulaski of Virginia.

19. Pulaski Furniture Corporation was a publicly-held company which was traded over-the-counter and which was located in the Commonwealth of Virginia. It had an oral agreement with petitioner wherein the latter was its exclusive selling agent in the territories specified, i.e., New York City, the State of New Jersey, all of Canada and Puerto Rico and certain specified national accounts. Approximately 50 percent of the sales petitioner generated for Pulaski Furniture Corporation were made at the latter's High Point furniture market. The furniture market was the Southern Furniture Market Center, Main Street, High Point, North Carolina. The market consisted of showrooms and offices, complete with telephones, etc. Petitioner used the market for a 10 day to 2 week period twice a year. One partner would spend a couple of days a month over a period of two to three months in preparation for the shows.

20. All work pertaining to petitioner's sales generated in High Point was completed in High Point.

21. Pulaski Furniture Corporation paid petitioner for all sales that it generated.

22. Petitioner is not registered with the State of North Carolina as doing business therein, nor does it file North Carolina business tax returns, nor does it have a telephone listing in North Carolina.

23. Petitioner's partners, Michael Druckman and his father, Irving Druckman, owned less than 1 percent each of the shares of Pulaski Furniture Corporation of Virginia.

24. Pulaski Furniture Company of New York, Inc. was a jobber, buying its furniture for resale from Pulaski Furniture Corporation of Virginia. Its stock was held 50 percent by Irving Druckman and the other 50 percent by his nephew, David Druckman. Petitioner contended that it and "Pulaski Furniture of New York are separate and distinct entities that perform different functions, have different ownership and control, are in different businesses entirely...". Petitioner also contended that "Pulaski Furniture of Virginia is separate and distinct in ownership from Pulaski Furniture of New York".

25. Michael Druckman was a commissioned sales agent for Pulaski Furniture Company of New York, Inc.

26. Most of the salesmen that work for petitioner also work for Pulaski Furniture Company of New York, Inc.

27. Both Pulaski Furniture Company of New York, Inc. and petitioner are situated in the same building in New York City, i.e. 200 Lexington Avenue.

28. Both of petitioner's partners reported on its IT-204 New York State Partnership Returns for the years in issue that they devoted 100 percent of their time to petitioner's affairs. However, at the hearing herein, Michael Druckman testified that as to his time that was a mistake and that he devotes just "a little more" than half of his time to petitioner's affairs.

29. Michael Druckman filed an unincorporated business tax return and reported the commissions that he received from Pulaski Furniture Company of New York, Inc.

30. Except for the two items in issue herein, the petitioner concedes all of the other audit items that gave rise to the Statement of Audit Changes and the Notice of Deficiency herein.

CONCLUSIONS OF LAW

A. That Irving Druckman and Son d/b/a Little Rock Furniture was a separate and distinct entity from that of Pulaski Furniture Company of New York, Incorporated. Accordingly, the commissions earned by Michael Druckman from sales he generated for said Pulaski Furniture Company of New York, Inc. were properly reportable on his personal income and unincorporated business tax returns and that said commissions had no nexus with petitioner.

B. That Tax Law section 707 subsection (a) provides:

"§707 Allocation to New York. (a) General. - If an unincorporated business is carried on both within and without this state,...there shall be allocated to this state a fair and equitable portion of the excess of its unincorporated business gross income over its unincorporated business deductions. If the unincorporated business has no regular place of business outside this state, all of such excess shall be allocated to this state." (Emphasis supplied.)

C. That petitioner had no regular place of business outside New York State. Accordingly, for purposes of computing unincorporated business taxes due, petitioner is not entitled to allocate a portion of its income to out-of-state sources. (Giordano v. State Tax Commission, (1976) 52 A.D.2d 691, 382 N.Y.S.2d 576.)

D. That the petition herein is granted to the extent indicated in Conclusion of Law "A", supra; and that, except as so granted, the remainder of the Notice of Deficiency is sustained.

DATED: Albany, New York

NOV 26 1982

STATE TAX COMMISSION

*acting* Robert W. Bondurant  
PRESIDENT

Francis R. Koehn  
COMMISSIONER

Mark J. [unclear]  
COMMISSIONER