

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George Ohrstrom :
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. :

AFFIDAVIT OF MAILING

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 16th day of July, 1982, he served the within notice of Decision by certified mail upon George Ohrstrom, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Ohrstrom
540 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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of July, 1982.

Ann A. Hegeland

J. Vredenburg

STATE OF NEW YORK

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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 16th day of July, 1982, he served the within notice of Decision by certified mail upon Alan Berlin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

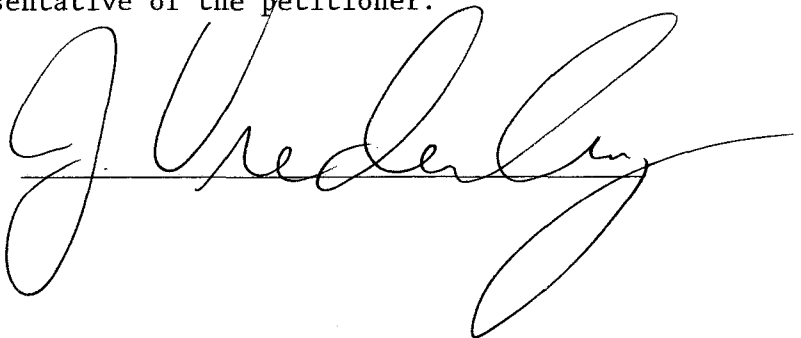
Alan Berlin
Curtis, Mallet-Prevost, Colt & Mosle
100 Wall Street
New York, NY 10005

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
16th day of July, 1982.

Quinn A. Haglund



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

July 16, 1982

George Ohrstrom
540 Madison Ave.
New York, NY 10022

Dear Mr. Ohrstrom:

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
Alan Berlin
Curtis, Mallet-Prevost, Colt & Mosle
100 Wall Street
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
GEORGE OHRSTROM
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1974.

DECISION

Petitioner, George Ohrstrom, 540 Madison Avenue, New York, New York 10022, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1974 (File No. 21152).

A formal hearing was held before Arthur Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 30, 1981 at 9:30 A.M. Petitioner appeared by Curtis, Mallet-Prevost, Colt & Mosle, Esqs. (Alan S. Berlin, Esq. and Cynthia Shoss, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether income received by petitioner George Ohrstrom during 1969 and 1970 from directorships, corporations, and certain business transactions, was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, George Ohrstrom, filed a New York State Income Tax Resident Return for the year 1974. On this return petitioner reported that he received income from the following sources:

Dover Corporation New York City, New York	\$34,240.00;
Carlisle Corporation Carlisle, Pennsylvania	\$18,166.73;
Leach Corporation Los Angeles, California	\$ 6,600.00;
Subscription Television, John Blue Division, Inc. Huntsville, Alabama	\$13,999.92;
Robco Products, Inc. Niles, Ohio	\$11,000.00;
Leigh Products, Inc. Coopersville, Michigan	\$ 9,299.94;
Leigh Products, Inc. Grand Rapids, Michigan	\$10,134.59;

Petitioner also reported the receipt of the following directors' fees:

Leigh Products, Inc. Carlisle, Pennsylvania	\$ 1,800.00;
Leach Corporation Los Angeles, California	\$ 2,400.00;
Carlisle Corporation Cincinnati, Ohio	\$ 3,600.00;
Dorset Corporation Louisville, Kentucky	\$ 2,000.00;

In addition to the foregoing income, petitioner reported income from Sanford Brick Corporation in the amount of \$20,000.00 for arranging the sale of Sanford Brick Corporation common stock to Justin Industries Corporation and a fee of \$10,000.00 from John Blue Company for guaranteeing loans of John Blue Company.

2. On April 8, 1977 the Audit Division issued a Statement of Audit Changes for 1974 proposing unincorporated business tax against petitioner in the amount of \$5,678.26, penalties pursuant to Tax Law sections 685(a)(1) and (2)

in the amount of \$1,959.00, and interest in the amount of \$956.05, for a total of \$8,593.31. The statement was issued on the ground that income received by petitioner from salaries and directors fees represents income from an unincorporated business. On October 31, 1977 the Audit Division issued a Notice of Deficiency together with a revised explanatory Statement of Audit Changes for 1974 imposing unincorporated business tax against petitioner in the amount of \$7,328.26, penalties pursuant to Tax Law sections 685(a)(1) and (2) in the amount of \$2,638.18, and interest in the amount of \$1,585.40, for a total of \$11,551.84. The proposal of additional tax in the revised Statement of Audit Changes was premised upon the ground that the income received by petitioner for arranging the sale of stock and guaranteeing loans was also subject to unincorporated business tax.

3. In 1974, petitioner was one of nine Directors and one of five members of the Executive Committee of Carlisle Corporation. In 1974, Carlisle Corporation was listed on the New York Stock Exchange. Petitioner owned less than five percent of the stock of Carlisle Corporation. Carlisle Corporation produces a variety of rubber and plastic components; specialty wire and cable; metal wheels; differentials and transmissions; industrial cleaning equipment; and radio equipment. During 1974, petitioner received compensation from Carlisle Corporation in the amount of \$3,600.00 for director's fees and \$18,166.73 for services on the Executive Committee. Deductions for Federal income tax and social security taxes were made from petitioners' remuneration for his services on the Executive Committee. Payments were also made in accordance with the Federal Unemployment Tax Act. Petitioner was covered by Carlisle Corporation's travel accident insurance plan.

4. In 1974 petitioner was one of nine Directors and one of six members of the Executive Committee of Dover Corporation. Petitioner was also a Vice-President of Dover Corporation. In 1974 Dover Corporation was listed on the New York Stock Exchange and the Stock Exchange in London. Petitioner owned less than five percent of the stock of Dover Corporation. In 1974 Dover Corporation was engaged in producing hydraulic elevators, electric elevators, and a number of products used in petroleum production and marketing. Petitioner was paid a salary of \$34,240.00 in 1974 for his services as Vice-President. There were deductions from this salary for Federal income taxes, New York State income taxes, New York City income taxes, and social security taxes. Unemployment insurance contributions were also paid. Petitioner was covered by the employee benefit plans of Dover Corporation including life insurance, major medical insurance, and pension.

5. In 1974 petitioner was one of eight Directors and a Vice-President of Leach Corporation. In 1974 Leach Corporation stock was traded "over the counter". Petitioner owned less than twenty-five percent of Leach Corporation. Leach Corporation was engaged in manufacturing relays and electronic switching devices for commercial transport aircraft and military aerospace markets. In 1974 petitioner was paid \$2,400.00 in director's fees and \$6,600.00 as salary for his services as an officer. There were deductions from petitioner's salary for Federal income taxes, New York State income taxes, New York City income taxes, and social security taxes. Leach Corporation made contributions for unemployment insurance.

6. In 1974 petitioner was one of eight Directors and a Vice-President of Subscription Television, Inc. (now Burnley Corporation). Subscription Television, Inc. stock was traded "over the counter". Petitioner owned less than twenty

percent of Subscription Television Inc. stock. In 1974 petitioner was paid a salary of \$13,999.92 for his services as a Vice-President. There were deductions from petitioner's salary for Federal income taxes, New York State income taxes, New York City income taxes, and social security taxes. Subscription Television, Inc. also paid unemployment insurance.

7. The Treasurer of Burnley Corporation has sworn in an affidavit that:

"The records of the corporation reflect that the corporation paid George L. Ohrstrom a fee of \$10,000 in 1974 for guaranteeing payment of a loan of \$3,250,000 by a lending institution to the corporation. The minutes indicate that this fee was paid for the purpose of inducing Mr. Ohrstrom to enter into the guaranty agreement. The minutes further reflect that this was the first such guaranty paid to Mr. Ohrstrom and that he withdrew from the Directors' meeting at which the Board decided to pay this fee."

8. In 1974 petitioner was a Vice-President of Robco Products, Inc. and on February 1, 1974 he became one of seven Directors. In 1974 petitioner did not own a controlling interest in Robco Products, Inc.'s stock. Robco Products, Inc. manufactured and supplied products for nurseries, florists and gardeners. Petitioner was paid a salary of \$11,000.00 in 1974 for his services as a Vice-President. There were deductions from petitioner's salary for Federal income taxes, New York State income taxes, New York City income taxes, and social security taxes. Unemployment contributions were also paid.

9. In 1974 petitioner was a Vice-President and one of ten Directors of Leigh Products, Inc. Leigh Products, Inc. was listed on the American Stock Exchange and was engaged in producing products for construction and remodeling of dwellings. Leigh Products, Inc. also produced products for light commercial applications. In the year at issue, petitioner owned less than five percent of Leigh Products, Inc. In 1974 petitioner received \$1,800.00 for director's fees and \$19,434.53 as salary for his services as a Vice-President of Leigh Products, Inc. There were deductions from petitioner's salary for Federal income taxes,

New York State income taxes, New York City income taxes, and social security taxes. Unemployment insurance contributions were also paid.

10. Only Dover Corporation has its corporate headquarters located in New York State. The corporate headquarters of the other corporations were located in either Ohio, Michigan, California, Indiana, or Alabama.

11. Throughout 1974 none of the corporations had any dealings or other relationships with the other corporations.

12. Petitioner was involved in the policymaking and general management of each corporation. In his position, he was required to be kept advised of the entire business operations of each corporation. Petitioner was also required to meet with the officers of the respective corporations and with others concerning corporate operations or problems.

13. Petitioner did not hold himself out to the public as a provider of financial services or solicit the corporate directorships or offices which he held.

14. The expenses which petitioner incurred for each corporation were reimbursed by the respective corporations.

15. The preponderance of the evidence establishes that the services which petitioner performed for each corporation were subject to review by the Board of Directors and stockholders of the respective corporations.

16. Each of the foregoing corporations, with the possible exception of Subscription Television, Inc., provided office space and clerical assistance, at the firm's expense, as needed by its directors or officers.

CONCLUSIONS OF LAW

A. That Tax Law §703(b) provides that:

"Services as employee, et cetera. -- The performance of services by an individual as an employee or as an officer or director of a

corporation, society, association, or political entity, or as a fiduciary, shall not be deemed an unincorporated business, unless such services constitute part of a business regularly carried on by such individual."

B. That 20 NYCRR 203.10(c), which became effective February 1, 1974, provides, in part, that:

"(c) Employer-employee relationship determined by facts and circumstances. Whether there is sufficient direction and control which results in the relationship of employer and employee will be determined upon an examination of all the pertinent facts and circumstances of each case. The designation and description of the relationship by the parties, whether by contract or otherwise, is not necessarily determinative of the status of the individual for unincorporated business income tax purposes. Other factors to be considered in determining if there is a sufficient exercise of direction and control resulting in an employer-employee relationship are whether the individual performing the services maintains his own office, engages his own assistants or hires his own employees, or incurs expenses without reimbursement.... Still other factors which may have some bearing are whether or not

(1) personal income taxes or Federal insurance contributions are deducted from compensation to be paid to the individual,

(2) whether or not the person or entity for whom the services are performed pays unemployment insurance,

(3) whether or not the individual is a member of an employee pension plan, or

(4) whether or not the individual is a member of an employee union or association."

C. That in view of the facts: that each of the corporations, with the possible exception of Subscription Television, Inc., provided office space and clerical assistance; that each corporation reimbursed petitioner for his expenses; and, that each corporation which paid petitioner a salary withheld personal income taxes and social security taxes and made contributions to unemployment insurance; petitioner was an employee within the meaning of Tax Law §703(b) and his salary is not subject to unincorporated business tax.

D. That 20 NYCRR 203.10(d), which became effective February 1, 1974, provides, in part:

"Services performed as an employee which constitute business activity. Personal services rendered by an individual as an employee, officer, director or fiduciary will ordinarily be deemed part of a business regularly carried on by such individual if such services are performed in furtherance of or for the direct benefit of other business activities or occupational activities the conduct of which constitutes an unincorporated business under the provisions of subdivision (a) of this section. For purposes of the preceding sentence, services as an employee, officer, director or fiduciary performed by an individual will not be deemed to be performed in furtherance of or for the direct benefit of other business or occupational activities of the individual

* * *

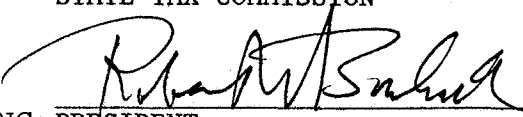
(2) if the services of an employee, officer, director or fiduciary are contracted for or undertaken and performed entirely independently of any other business activity or occupational activity engaged in by the individual."

E. That since each of the corporations for which petitioner serviced as a director and/or officer operated independently of the other corporations, petitioner's income as a director of corporations is not subject to unincorporated business tax. Similarly, the fees received by petitioner for arranging the sale of Sanford Brick common stock and for guaranteeing loans of John Blue Company were not part of an unincorporated business conducted by petitioner.


F. That the petition of George Ohrstrom is granted and the Notice of Deficiency dated October 31, 1977 is cancelled.

DATED: Albany, New York
JUL 16 1982

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER