

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Sam Skurnick

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 1976. :

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 6th day of October, 1982, he served the within notice of Decision by certified mail upon Sam Skurnick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

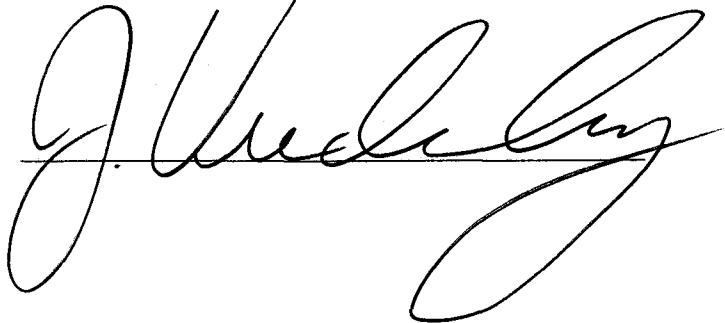
Sam Skurnick  
143 Hoyt St., Apt. 5J  
Stamford, CT 06905

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  
6th day of October, 1982.

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174



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

October 6, 1982

Sam Skurnick  
143 Hoyt St., Apt. 5J  
Stamford, CT 06905

Dear Mr. Skurnick:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
SAM SKURNICK  
for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Year 1976.

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DECISION

Petitioner, Sam Skurnick, 143 Hoyt Street, Stamford, Connecticut 06905, 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 1976 (File No. 28410).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 17, 1981 at 2:45 P.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

I. Whether the business activities of petitioner constituted an unincorporated business or rather the practice of a profession deemed not to be an unincorporated business.

II. Whether petitioner was liable for penalties for failure to file an unincorporated business tax return and pay tax pursuant thereto.

FINDINGS OF FACT

1. On June 29, 1979, the Audit Division issued a Statement of Audit Changes against petitioner, Sam Skurnick, asserting unincorporated business tax due for 1976 in the amount of \$16,742.44, plus penalties of \$4,855.31, under sections 685(a)(1) and (2) of the Tax Law, and interest of \$3,138.71, for a

total of \$24,736.46. The statement claimed that "(t)he income from your activities as a stockbroker constitutes the carrying on of an Unincorporated Business and the net income is subject to the Unincorporated Business Tax as imposed under Article 23 of the New York State Tax Law." Adjustment was also made for reported Federal audit changes of \$125,694.00. A Notice of Deficiency based on the Statement of Audit Changes was issued on October 4, 1979.

2. Petitioner stated on his tax return that his occupation was "Broker". He now claims that it should have read "Investment Manager". While he is a member of the New York Stock Exchange and/or registered broker-dealer, he maintains that he provided a personal service to individuals in his fiduciary capacity as an investment manager. He took special courses in securities analysis and corporate finance to achieve expertise in this field.

3. Sam Skurnick believed that he followed tax instructions of section 703(b) of the Tax Law which exempts the services of a fiduciary from the imposition of the unincorporated business tax. He also followed the dictate of an accountant from whom he sought only advice.

#### CONCLUSIONS OF LAW

A. That the activities of petitioner, Sam Skurnick, as a broker-dealer and/or investment manager acting in a fiduciary manner during 1976 did not constitute the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

B. That the activities of petitioner constituted the carrying on of an unincorporated business under section 703 of the Tax Law.

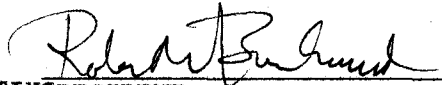
C. That petitioner acted in good faith and all penalties imposed pursuant to sections 685(a)(1) and (2) of the Tax Law are cancelled.

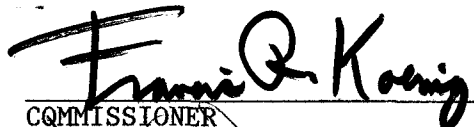
D. That the petition of Sam Skurnick is granted to the extent indicated in Conclusion of Law "C"; that the Notice of Deficiency issued October 4, 1979 is to be modified accordingly; and that except as so modified, the Notice is sustained.

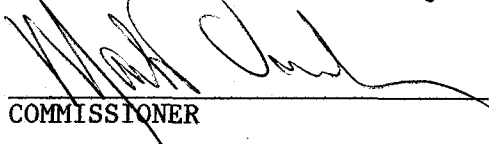
DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

  
ACTING PRESIDENT

  
COMMISSIONER

  
COMMISSIONER