

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Herman Hoffman	:	
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 Years 1976 - 1978.	:	

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Herman Hoffman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:


Herman Hoffman  
1075 Central Park Ave.  
Scarsdale, NY 10583

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  
8th day of July, 1983.





AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

\_\_\_\_\_  
In the Matter of the Petition :  
of :  
Herman Hoffman :  
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 1976 - 1978. :  
\_\_\_\_\_

State of New York  
County of Albany

Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of July, 1983, she served the within notice of Decision by certified mail upon Morris L. Machtiger the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

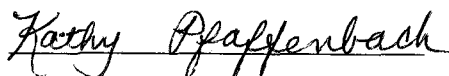
Morris L. Machtiger  
19 Birchwood Dr. W.  
Valley Stream, NY 11580

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  
8th day of July, 1983.

  
\_\_\_\_\_

  
\_\_\_\_\_

AUTHORIZED TO ADMINISTER  
OATHS PURSUANT TO TAX LAW  
SECTION 174

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

July 8, 1983

Herman Hoffman  
1075 Central Park Ave.  
Scarsdale, NY 10583

Dear Mr. Hoffman:

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) 690 & 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 Law 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  
Building #9 State Campus  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Morris L. Machtiger  
19 Birchwood Dr. W.  
Valley Stream, NY 11580  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
HERMAN HOFFMAN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1976,	:	
1977 and 1978.	:	

---

Petitioner, Herman Hoffman, 1075 Central Park Avenue, Scarsdale, New York 10583, 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 1976, 1977 and 1978 (File No. 32045).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 15, 1982 at 9:15 A.M. Petitioner appeared with Morris L. Machtiger, CPA. The Audit Division appeared by Paul B. Coburn, Esq. (Anne Murphy, Esq., of counsel).

ISSUE

Whether certain business expenses incurred were attributable to petitioner's activities engaged in as an insurance broker or his activities engaged in as an attorney.

FINDINGS OF FACT

1. Herman Hoffman (hereinafter petitioner) timely filed a New York State Income Tax Resident Return for each of the years 1976, 1977 and 1978 whereon he reported business income derived from his activities as both an insurance broker and an attorney. Additionally, he timely filed an Unincorporated

Business Tax Return for each of said years whereon he reported his insurance brokerage income. With respect to expenses, he allocated all of his substantial office, travel and entertainment expenses to his insurance brokerage activities. Only minimal expenses for legal publications, stationery, insurance and bonding were charged against his exempt income derived from the practice of law.

2. On May 6, 1980, the Audit Division issued a Statement of Audit Changes wherein various adjustments were made as follows:

	<u>1976</u>	<u>1977</u>	<u>1978</u>
Additional income per audit	\$ 3,100.00	\$ 3,114.00	\$ 3,100.00
Business expenses disallowed deemed personal	3,152.00	3,517.00	3,412.00
Business expenses deemed connected with attorney income rather than insurance income and reapportioned accordingly: 1976 - 35.5%	12,124.00		
1977 - 38.7%		14,526.00	
1978 - 16.7%			6,022.00
Allowance for taxpayer services	(3,675.00)	(4,231.00)	(2,110.00)
Net adjustment per audit	<u>\$14,701.00</u>	<u>\$16,926.00</u>	<u>\$10,424.00</u>

Accordingly, a Notice of Deficiency was issued against petitioner on July 24, 1980 asserting unincorporated business tax of \$2,092.13, plus interest of \$431.04, for a total of \$2,523.17.

3. Petitioner did not contest the adjustments made for "Additional income per audit" and "Business expenses disallowed deemed personal".

4. Petitioner carried on his insurance brokerage activities as well as his law practice from his office located at 1075 Central Park Avenue, Scarsdale, New York. He did not maintain separate bank accounts or separate books and records for each activity.

5. Petitioner contended that the portion of his expenses deemed attributable to his legal activities by the Audit Division was erroneous. He testified that

possibly five to ten percent of his expenses could be considered attributable to his law practice.

6. Petitioner claimed that his office was used virtually exclusively for the insurance brokerage business. His legal work, he claimed, was done out of the office, either at home or at his clients' places of business. He testified that he devoted no time to the insurance brokerage business since his secretary handled 100 percent of the insurance related activities. The only legal work done in his office, he claimed, was the occasional answering of a law related telephone call.

7. When further questioned as to the time spent in his office and the activities engaged in during such time, petitioner rendered testimony to the effect that he spent less than fifty percent of his time in his office, and, contradictory to his prior testimony, that such time was spent working on his legal matters.

8. Petitioner contended that an allocation of business expenses attributable to each of his said activities should be determined based on the number of checks disbursed and received for each activity.

#### CONCLUSIONS OF LAW

A. That petitioner has failed to sustain his burden of proof, required pursuant to sections 722 and 689(e) of the Tax Law, to show that the Audit Division's allocations of business expenses to the income derived from his legal activities were erroneous or improper. Accordingly, the adjustments made with respect thereto are hereby sustained.

B. That the petition of Herman Hoffman is denied and the Notice of Deficiency dated July 24, 1980 is hereby sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JUL 08 1983

  
\_\_\_\_\_  
PRESIDENT

  
\_\_\_\_\_  
COMMISSIONER

  
\_\_\_\_\_  
COMMISSIONER