

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kornblum & Bruder : 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 1967 - 1975. :

State of New York
County of Albany

Kathy Pfaffenbach, 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 24th day of January, 1983, she served the within notice of Decision by certified mail upon Kornblum & Bruder, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kornblum & Bruder
c/o William Bruder
65-03 173rd St.
Flushing, NY 11365

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
24th day of January, 1983.

Kathy Pfaffenbach

Conrad A. Magelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Kornblum & Bruder

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AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
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Business Tax under Article 23 of the Tax Law for :
the Years 1967 - 1975.

State of New York
County of Albany

Kathy Pfaffenbach, 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 24th day of January, 1983, she served the within notice of Decision by certified mail upon Milton Held the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton Held
Held, Kranzler & Ross
225 West 34th St.
New York, NY 10001

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
24th day of January, 1983.

Kathy Pfaffenbach

Donnie A. Hagelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 24, 1983

Kornblum & Bruder
c/o William Bruder
65-03 173rd St.
Flushing, NY 11365

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
Milton Held
Held, Kranzler & Ross
225 West 34th St.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Paul Kornblum
and Ida Kornblum (dec'd) :

: AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1971.

State of New York
County of Albany

Kathy Pfaffenbach, 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 24th day of January, 1983, she served the within notice of Decision by certified mail upon Paul Kornblum, and Ida Kornblum (dec'd) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Kornblum
and Ida Kornblum (dec'd)
c/o William Bruder
65-03 173rd St.
Flushing, NY 11365

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
24th day of January, 1983.

Kathy Pfaffenbach

Bernie A. Hagopian

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Paul Kornblum :
and Ida Kornblum (dec'd) :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1971.

State of New York
County of Albany

Kathy Pfaffenbach, 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 24th day of January, 1983, she served the within notice of Decision by certified mail upon Milton Held the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton Held
Held, Kranzler & Ross
225 West 34th St.
New York, NY 10122

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
24th day of January, 1983.

Kathy Pfaffenbach

Ronnie A. Haglund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 24, 1983

Paul Kornblum
and Ida Kornblum (dec'd)
c/o William Bruder
65-03 173rd St.
Flushing, NY 11365

Dear Mr. Kornblum:

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 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
Milton Held
Held, Kranzler & Ross
225 West 34th St.
New York, NY 10122
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
William Bruder : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income :
Tax under Article 22 of the Tax Law for the Year :
1971.

State of New York
County of Albany

Kathy Pfaffenbach, 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 24th day of January, 1983, she served the within notice of Decision by certified mail upon William Bruder, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

William Bruder
65-03 173rd St.
Flushing, NY 11365

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
24th day of January, 1983.

Kathy Pfaffenbach

Conrad R. Heyland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
William Bruder : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Personal Income
Tax under Article 22 of the Tax Law for the Year :
1971.

State of New York
County of Albany

Kathy Pfaffenbach, 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 24th day of January, 1983, she served the within notice of Decision by certified mail upon Milton Held the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Milton Held
Held, Kranzler & Ross
225 W. 34th St.
New York, NY 10122

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.

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Sworn to before me this
24th day of January, 1983.

Kathy Pfaffenbach

Bruno A. Hapson

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

January 24, 1983

William Bruder
65-03 173rd St.
Flushing, NY 11365

Dear Mr. Bruder:

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 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
Milton Held
Held, Kranzler & Ross
225 W. 34th St.
New York, NY 10122
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
KORNBLUM & BRUDER :
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years 1967 :
through 1975. :

In the Matter of the Petition :
of :
PAUL KORNBLUM and IDA KORNBLUM (deceased) : DECISION
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Year 1971. :

In the Matter of the Petition :
of :
WILLIAM BRUDER :
for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax law for the Year 1971. :

Petitioners, Kornblum & Bruder, Paul Kornblum and Ida Kornblum (deceased) and William Bruder, c/o William Bruder, 65-03 173rd Street, Flushing, New York 11365, filed petitions for redetermination of deficiencies or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1967 through 1975 (File Nos. 14999, 16523, 18976, 15001 and 15000).

Petitioners filed a waiver of formal hearing and requested that this matter be decided by the State Tax Commission on the basis of the existing

record. After due consideration, the State Tax Commission renders the following decision.

ISSUES

I. Whether fees received by petitioner Kornblum & Bruder for the management of real property owned by petitioner and others were subject to unincorporated business tax.

II. Whether petitioner Kornblum & Bruder purchased replacement property within the required time period in order to postpone the gain on an involuntary conversion under section 1033 of the Internal Revenue Code.

III. Whether member partners Paul Kornblum and William Bruder derived gain from involuntary conversion of partnership property.

FINDINGS OF FACT

1. Petitioner, Kornblum & Bruder ("the partnership") filed New York State Partnership Returns for the years 1967 through 1975 but did not file Unincorporated Business Tax Returns for those years. Petitioners Paul and Ida Kornblum and petitioner William Bruder each filed New York State Income Tax Returns for the year 1971.

2. On January 26, 1976, the Audit Division issued a Notice of Deficiency to the partnership in the amount of \$22,671.77 plus interest of \$6,635.74 for the years 1967 through 1972. On August 30, 1976, the Audit Division issued a Notice of Deficiency to the partnership in the amount of \$10,782.02 plus interest of \$1,593.28 for the years 1973 and 1974. On December 20, 1976, the Audit Division issued a Notice of Deficiency to the partnership in the amount of \$1,655.60 plus interest of \$96.01 for the year 1975.

3. The reason for the above mentioned deficiencies was that business activities of the partnership involving fees received for the management of real property subjected the partnership to unincorporated business tax.

4. On January 26, 1976, the Audit Division issued a Notice of Deficiency and a Statement of Audit Changes to petitioners Paul and Ida Kornblum in the amount of \$1,451.13 plus interest of \$329.12 for the year 1971. On January 26, 1976, the Audit Division also issued a Notice of Deficiency and a Statement of Audit Changes to petitioner William Bruder in the same amount and for the same year. Both petitioners signed consents fixing the period of limitation upon assessment at April 15, 1976. The reason given for these deficiencies was that the partnership failed to replace involuntarily converted property within the required time period and the gain received was thus reportable on the personal income tax returns of the individual partners.

5. The partnership was engaged in the management of its own rental properties as well as a few apartment houses owned by a corporation, an individual partner, and others in return for which it collected both rental income and management fees. Of the management fees received for the periods in issue, 58.9 percent came from properties owned by the partnership, 19.2 percent came from properties owned by a corporation of which the individual partners were the principal stockholders, 1.3 percent came from property owned by petitioner Paul Kornblum individually, and 20.6 percent came from properties owned by others.

6. The "management fees" from properties owned solely by the partnership were the result of internal bookkeeping entries used to allocate maintenance and repair expenses to specific properties owned by the partnership. These fees should have been credited to the respective expense account at the end of

the year; however, due to erroneous accounting procedures, the partnership failed to reverse the entry for the management income account. This erroneous procedure was pointed out by a letter from the Technical Information Service of the American Institute of Certified Public Accountants which stated, in part, that the management fees from partnership properties generated no revenue and cannot be considered recognizable income.

7. The income generated from the management of the properties owned by the corporation, Paul Kornblum, and others was revenue derived from the normal operation of the partnership as a property management firm and was not an internal bookkeeping figure used to allocate expenses.

8. On August 1, 1970, a building owned by the partnership and located at 214 Forsyth Street, New York, New York was destroyed by fire. On January 31, 1971 the partnership received net insurance proceeds for its loss in the amount of \$41,460.94. On December 28, 1973, the partnership purchased replacement property located at 184-186-188 Norfolk Street, New York, New York for a total cost of \$71,200.09. A copy of the deed for this conveyance indicates that the transaction occurred on December 28, 1973 and that the deed was later recorded in New York County.

CONCLUSIONS OF LAW

A. That section 701(a) of the Tax Law imposes a tax "on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within" New York State.

B. That section 703(e) of the Tax Law provides that an owner of real property is not considered to be engaged in an unincorporated business "solely by reason of holding, leasing or managing real property." Regulation 20 NYCRR 203.13(a), added February 1, 1974, during the period in issue, specifies that

this exemption does not apply unless the owner manages real property "for his or its own account."

C. That, in determining whether a partnership is managing its own property or property owned by others, a partnership is considered an entity separate and distinct from the individual partners and from a corporation wholly owned by the individual partners (see Chasanoff Operating Co. v. State Tax Commission, 79 A.D.2d 780; Elkind v. State Tax Commission, 63 A.D.2d 789; In re Schirrmeister's Estate, 8 A.D.2d 180, rearg. and app. den., 9 A.D.2d 601, mot. for lv. to app. den., 7 N.Y.2d 708). Therefore, the partnership of Kornblum & Bruder was an unincorporated entity which was engaged in the management of property for the accounts of others and was not exempt from the unincorporated business tax under section 703(e) of the Tax Law.

D. That the "management fees" derived from property owned by the partnership as discussed in Finding of Fact "6" were the result of accounting entries and are not includible in unincorporated business gross income; therefore, said fees may not be included in determining the amount of unincorporated business tax due.

E. That section 1033(a)(3)(A) of the Internal Revenue Code provides, in part, that where property has been involuntarily converted into money, any gain will be recognized only to the extent that the amount realized on conversion exceeds the cost of replacement property similar in use to the converted property; however, the replacement property must be purchased within a period beginning with the date of disposition of the converted property and ending "two years after the close of the first taxable year in which any part of the gain upon the conversion is realized." (Internal Revenue Code section 1033(a)(3)(B)(i)).

F. That the partnership realized a gain from the converted property on January 31, 1971 and, therefore, the period within which replacement property was required to be purchased ended two years from the end of the 1971 tax year or December 31, 1973. Since the partnership purchased replacement property on December 28, 1973 the gain on the converted property was, therefore, postponed and not subject to the 1971 personal income tax to the individual partners.

G. That the petitions of Kornblum & Bruder, Paul Kornblum and Ida Kornblum (deceased) and William Bruder are granted to the extent indicated in Conclusions of Law "D" and "F" above; that the Audit Division is hereby directed to modify the notices of deficiency issued January 26, 1976, August 30, 1976, and December 20, 1976; and that, except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York

JAN 24 1983

STATE TAX COMMISSION


ACTING PRESIDENT


COMMISSIONER


COMMISSIONER