

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hyman Shapiro :
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 1969 - 1971. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Hyman Shapiro, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hyman Shapiro
359 East Main Street
Mount Kisco, NY 10549

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
27th day of May, 1983.

David Parchuck

Annice P. Staplund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Hyman Shapiro :
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 1969 - 1971. :

State of New York
County of Albany

David Parchuck, 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 27th day of May, 1983, he served the within notice of Decision by certified mail upon Robert B. Spring the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert B. Spring
Jaffe, Haft & Spring
130 East 40th Street
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 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
27th day of May, 1983.

David Parchuck

Carrie A. Hayelund

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Hyman Shapiro
359 East Main Street
Mount Kisco, NY 10549

Dear Mr. Shapiro:

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
Robert B. Spring
Jaffe, Haft & Spring
130 East 40th Street
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HYMAN SHAPIRO	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1969, 1970 and 1971.	:	

Petitioner, Hyman Shapiro, 359 East Main Street, Mount Kisco, New York, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1969, 1970 and 1971 (File No. 19547).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 21, 1978. Petitioner appeared by Robert B. Spring, Esq. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the petitioner is engaged in an unincorporated business when his income producing activities consist of placing real estate loans and managing real estate enterprises.

FINDINGS OF FACT

1. A Notice of Deficiency was issued against petitioner, Hyman Shapiro, on April 14, 1977, for unincorporated business tax for the years 1969, 1970 and 1971 in the amount of \$8,770.46, plus penalties for failure to file returns or to pay taxes in the amount of \$4,165.96 and interest of \$2,958.57, for a total of \$15,894.99.

2. The income on which the deficiency is computed consists of miscellaneous fees for each of the years 1969, 1970 and 1971 of \$9,218.74, \$19,547.00 and \$31,000.00, respectively and "salaries" for each respective year of \$22,000.00, \$49,000.00 and \$59,500.00.

3. Petitioner describes himself on his personal income tax return as an "executive". He is an attorney by training. He did not engage in any business in his own name as an individual proprietor, but was engaged as a partner in various enterprises and received "salaries" from corporations in which he had an interest.

4. Petitioner did not personally appear or testify at the hearing.

5. The miscellaneous fees were described as "rebates". Some "rebates" were received by petitioner upon the purchase of real property by various partnerships and corporations in which petitioner had an interest. These amounted to \$2,500.00, \$7,828.00 and \$16,000.00 in the years 1969, 1970 and 1971, respectively. The remainder of the miscellaneous fees received (\$6,718.74 for 1969, \$11,719.00 for 1970 and \$15,000.00 for 1971) consisted of "rebates" to petitioner of a commission paid to a broker for a building loan, advanced over a three year period to a business in which petitioner had an interest.

6. The payments petitioner received for managing real estate enterprises were received from two business firms. Both firms supplied petitioner with withholding tax statements which showed that only social security taxes and no income taxes were withheld. The amount of \$7,500.00 was received in each year from Lenox Terrace Development Associates of 10 West 135th Street, New York, New York. This was a partnership engaged in the management of real property. It operated a complex of high-rise apartments and shops that extends in New

York City from 132nd Street to 135th Street and from Lenox Avenue to Fifth Avenue. The remainder of the salaries (\$14,500.00 for 1969, \$41,500.00 for 1970 and \$52,000.00 for 1971) was from H. R. Shapiro, Inc. of 250 West 57th Street, New York, New York, a corporation engaged in the construction of high-rise apartment buildings. All of the stock of this corporation was owned by petitioner and his wife.

7. Petitioner spent almost all of his time at the offices of H. R. Shapiro, Inc. and went to Lenox Terrace only occasionally. Mr. Shapiro's duties at H. R. Shapiro, Inc. were described as follows:

"He was in charge of financing, working with the various lending institutions, he worked with the various contractors, he went to the construction jobs and saw that they were well taken care of, as far as the various subcontractors were doing their jobs.

He worked with signing contracts with the various contractors, worked out contracts with them, as far as price and worked with all the lending institutions which he funded the various construction jobs."

8. The business of H. R. Shapiro, Inc. was obtained primarily from partnerships in which Mr. Shapiro had a partnership interest.

9. For his total income, petitioner claimed tax losses for each year as follows: \$497,218.14 for 1969, \$396,980.00 for 1970 and \$615,466.00 for 1971. These losses were derived from various partnership interests owned by Mr. Shapiro. Petitioner offered no testimony concerning these various partnership interests.

10. Petitioner failed to file any returns for unincorporated business tax or to pay said tax.

CONCLUSIONS OF LAW

A. That the fees received by petitioner for placing loans constituted business income. They were not true rebates of fees paid since it was not petitioner but the various business entities which had originally paid the

fees. The payments received for managing real estate cannot be considered to be salary. These payments were not treated as salaries for income tax withholding purposes and they should not be treated as salaries under the unincorporated business tax. Altogether, the petitioner's activities were so extensive that he must be deemed to be engaged in an unincorporated business.

B. That the penalties for failure to file a return or pay the tax are sustained.

C. That the deficiency is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

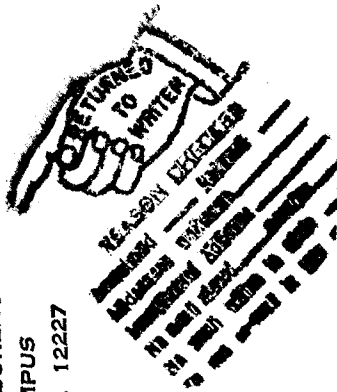
MAY 27 1983

Roderick A. Allen
PRESIDENT

Francis Q. Koenig
COMMISSIONER

[Signature]
COMMISSIONER

TA 26 (9-79)
STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Hyman Shapiro

Hyman Shapiro
359 East Main Street
Mount Kisco, NY 10549

CERTIFIED
P 481 207 912
MAIL

CB

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

May 27, 1983

Hyman Shapiro
359 East Main Street
Mount Kisco, NY 10549

Dear Mr. Shapiro:

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
Robert B. Spring
Jaffe, Haft & Spring
130 East 40th Street
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HYMAN SHAPIRO	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1969, 1970 and 1971.	:	

Petitioner, Hyman Shapiro, 359 East Main Street, Mount Kisco, New York, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1969, 1970 and 1971 (File No. 19547).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 21, 1978. Petitioner appeared by Robert B. Spring, Esq. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the petitioner is engaged in an unincorporated business when his income producing activities consist of placing real estate loans and managing real estate enterprises.

FINDINGS OF FACT

1. A Notice of Deficiency was issued against petitioner, Hyman Shapiro, on April 14, 1977, for unincorporated business tax for the years 1969, 1970 and 1971 in the amount of \$8,770.46, plus penalties for failure to file returns or to pay taxes in the amount of \$4,165.96 and interest of \$2,958.57, for a total of \$15,894.99.

2. The income on which the deficiency is computed consists of miscellaneous fees for each of the years 1969, 1970 and 1971 of \$9,218.74, \$19,547.00 and \$31,000.00, respectively and "salaries" for each respective year of \$22,000.00, \$49,000.00 and \$59,500.00.

3. Petitioner describes himself on his personal income tax return as an "executive". He is an attorney by training. He did not engage in any business in his own name as an individual proprietor, but was engaged as a partner in various enterprises and received "salaries" from corporations in which he had an interest.

4. Petitioner did not personally appear or testify at the hearing.

5. The miscellaneous fees were described as "rebates". Some "rebates" were received by petitioner upon the purchase of real property by various partnerships and corporations in which petitioner had an interest. These amounted to \$2,500.00, \$7,828.00 and \$16,000.00 in the years 1969, 1970 and 1971, respectively. The remainder of the miscellaneous fees received (\$6,718.74 for 1969, \$11,719.00 for 1970 and \$15,000.00 for 1971) consisted of "rebates" to petitioner of a commission paid to a broker for a building loan, advanced over a three year period to a business in which petitioner had an interest.

6. The payments petitioner received for managing real estate enterprises were received from two business firms. Both firms supplied petitioner with withholding tax statements which showed that only social security taxes and no income taxes were withheld. The amount of \$7,500.00 was received in each year from Lenox Terrace Development Associates of 10 West 135th Street, New York, New York. This was a partnership engaged in the management of real property. It operated a complex of high-rise apartments and shops that extends in New

York City from 132nd Street to 135th Street and from Lenox Avenue to Fifth Avenue. The remainder of the salaries (\$14,500.00 for 1969, \$41,500.00 for 1970 and \$52,000.00 for 1971) was from H. R. Shapiro, Inc. of 250 West 57th Street, New York, New York, a corporation engaged in the construction of high-rise apartment buildings. All of the stock of this corporation was owned by petitioner and his wife.

7. Petitioner spent almost all of his time at the offices of H. R. Shapiro, Inc. and went to Lenox Terrace only occasionally. Mr. Shapiro's duties at H. R. Shapiro, Inc. were described as follows:

"He was in charge of financing, working with the various lending institutions, he worked with the various contractors, he went to the construction jobs and saw that they were well taken care of, as far as the various subcontractors were doing their jobs.

He worked with signing contracts with the various contractors, worked out contracts with them, as far as price and worked with all the lending institutions which he funded the various construction jobs."

8. The business of H. R. Shapiro, Inc. was obtained primarily from partnerships in which Mr. Shapiro had a partnership interest.

9. For his total income, petitioner claimed tax losses for each year as follows: \$497,218.14 for 1969, \$396,980.00 for 1970 and \$615,466.00 for 1971. These losses were derived from various partnership interests owned by Mr. Shapiro. Petitioner offered no testimony concerning these various partnership interests.

10. Petitioner failed to file any returns for unincorporated business tax or to pay said tax.

CONCLUSIONS OF LAW

A. That the fees received by petitioner for placing loans constituted business income. They were not true rebates of fees paid since it was not petitioner but the various business entities which had originally paid the

fees. The payments received for managing real estate cannot be considered to be salary. These payments were not treated as salaries for income tax withholding purposes and they should not be treated as salaries under the unincorporated business tax. Altogether, the petitioner's activities were so extensive that he must be deemed to be engaged in an unincorporated business.

B. That the penalties for failure to file a return or pay the tax are sustained.

C. That the deficiency is sustained.

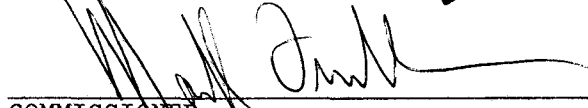
DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983

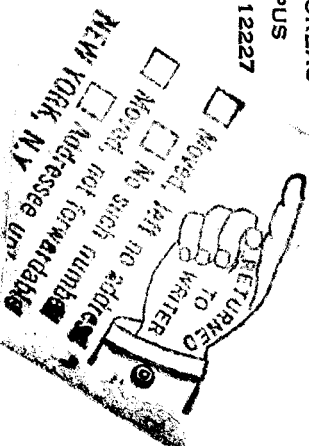

PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227



Robert B. Spring
Jaffe, Haft & Spring
130 East 40th Street
New York, NY 10016

MANVF

CERTIFIED

P 481 207 913

MAIL

CLAIM CHECK
NO.

72284

☐ HOLD

DATE

1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
Oct. 1980



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

May 27, 1983

Hyman Shapiro
359 East Main Street
Mount Kisco, NY 10549

Dear Mr. Shapiro:

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
Robert B. Spring
Jaffe, Haft & Spring
130 East 40th Street
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HYMAN SHAPIRO	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1969, 1970 and 1971.	:	

Petitioner, Hyman Shapiro, 359 East Main Street, Mount Kisco, New York, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1969, 1970 and 1971 (File No. 19547).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 21, 1978. Petitioner appeared by Robert B. Spring, Esq. The Audit Division appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the petitioner is engaged in an unincorporated business when his income producing activities consist of placing real estate loans and managing real estate enterprises.

FINDINGS OF FACT

1. A Notice of Deficiency was issued against petitioner, Hyman Shapiro, on April 14, 1977, for unincorporated business tax for the years 1969, 1970 and 1971 in the amount of \$8,770.46, plus penalties for failure to file returns or to pay taxes in the amount of \$4,165.96 and interest of \$2,958.57, for a total of \$15,894.99.

2. The income on which the deficiency is computed consists of miscellaneous fees for each of the years 1969, 1970 and 1971 of \$9,218.74, \$19,547.00 and \$31,000.00, respectively and "salaries" for each respective year of \$22,000.00, \$49,000.00 and \$59,500.00.

3. Petitioner describes himself on his personal income tax return as an "executive". He is an attorney by training. He did not engage in any business in his own name as an individual proprietor, but was engaged as a partner in various enterprises and received "salaries" from corporations in which he had an interest.

4. Petitioner did not personally appear or testify at the hearing.

5. The miscellaneous fees were described as "rebates". Some "rebates" were received by petitioner upon the purchase of real property by various partnerships and corporations in which petitioner had an interest. These amounted to \$2,500.00, \$7,828.00 and \$16,000.00 in the years 1969, 1970 and 1971, respectively. The remainder of the miscellaneous fees received (\$6,718.74 for 1969, \$11,719.00 for 1970 and \$15,000.00 for 1971) consisted of "rebates" to petitioner of a commission paid to a broker for a building loan, advanced over a three year period to a business in which petitioner had an interest.

6. The payments petitioner received for managing real estate enterprises were received from two business firms. Both firms supplied petitioner with withholding tax statements which showed that only social security taxes and no income taxes were withheld. The amount of \$7,500.00 was received in each year from Lenox Terrace Development Associates of 10 West 135th Street, New York, New York. This was a partnership engaged in the management of real property. It operated a complex of high-rise apartments and shops that extends in New

York City from 132nd Street to 135th Street and from Lenox Avenue to Fifth Avenue. The remainder of the salaries (\$14,500.00 for 1969, \$41,500.00 for 1970 and \$52,000.00 for 1971) was from H. R. Shapiro, Inc. of 250 West 57th Street, New York, New York, a corporation engaged in the construction of high-rise apartment buildings. All of the stock of this corporation was owned by petitioner and his wife.

7. Petitioner spent almost all of his time at the offices of H. R. Shapiro, Inc. and went to Lenox Terrace only occasionally. Mr. Shapiro's duties at H. R. Shapiro, Inc. were described as follows:

"He was in charge of financing, working with the various lending institutions, he worked with the various contractors, he went to the construction jobs and saw that they were well taken care of, as far as the various subcontractors were doing their jobs.

He worked with signing contracts with the various contractors, worked out contracts with them, as far as price and worked with all the lending institutions which he funded the various construction jobs."

8. The business of H. R. Shapiro, Inc. was obtained primarily from partnerships in which Mr. Shapiro had a partnership interest.

9. For his total income, petitioner claimed tax losses for each year as follows: \$497,218.14 for 1969, \$396,980.00 for 1970 and \$615,466.00 for 1971. These losses were derived from various partnership interests owned by Mr. Shapiro. Petitioner offered no testimony concerning these various partnership interests.

10. Petitioner failed to file any returns for unincorporated business tax or to pay said tax.

CONCLUSIONS OF LAW

A. That the fees received by petitioner for placing loans constituted business income. They were not true rebates of fees paid since it was not petitioner but the various business entities which had originally paid the

fees. The payments received for managing real estate cannot be considered to be salary. These payments were not treated as salaries for income tax withholding purposes and they should not be treated as salaries under the unincorporated business tax. Altogether, the petitioner's activities were so extensive that he must be deemed to be engaged in an unincorporated business.

B. That the penalties for failure to file a return or pay the tax are sustained.


C. That the deficiency is sustained.

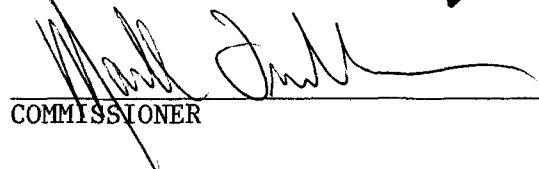
DATED: Albany, New York

STATE TAX COMMISSION

MAY 27 1983


PRESIDENT


COMMISSIONER


COMMISSIONER