

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George A. Cincotta : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Years 1976 - 1978. :

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon George A. Cincotta, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George A. Cincotta
233 Chapel Rd.
Manhasset, NY 11030

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1984.




pursuant to Tax Law section 174

Authorized to administer oaths

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
George A. Cincotta : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Unincorporated :
Business Tax under Article 23 of the Tax Law for :
the Years 1976 - 1978. :

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 18th day of January, 1984, he served the within notice of Decision by certified mail upon Seymour F. Bernstein, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour F. Bernstein
Deloitte, Haskins & Sells
One World Trade Center
New York, NY 10048

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office 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
18th day of January, 1984.




pursuant to Tax Law section 174

Authorized to administer oaths

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

January 18, 1984

George A. Cincotta
233 Chapel Rd.
Manhasset, NY 11030

Dear Mr. Cincotta:

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, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only 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
Seymour F. Bernstein
Deloitte, Haskins & Sells
One World Trade Center
New York, NY 10048
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
GEORGE A. CINCOTTA : 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, George A. Cincotta, 233 Chapel Road, Manhasset, New York 11030, 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. 34242).

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 May 13, 1983 at 10:45 A.M. Petitioner appeared with Seymour F. Bernstein, CPA. The Audit Division appeared by John P. Dugan, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether "finders fees" derived by petitioner during each year at issue are subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. George A. Cincotta (hereinafter petitioner) and his wife Theresa Cincotta filed a New York State Income Tax Resident Return for each of the years 1976, 1977 and 1978. On each of said returns, petitioner, who listed his occupation as "Assemblyman", reported other income characterized as "finders fees" in amounts as follows:

<u>Year</u>	<u>Finders Fees</u>
1976	\$25,775.00
1977	22,250.00
1978	31,500.00

Petitioner did not file an unincorporated business tax return for any of said years at issue.

2. On April 22, 1980, petitioner filed a Maximum Tax on Personal Service Income schedule for the year 1978. Pursuant to the computations incorporated therein, his 1978 personal income tax liability was reduced from \$8,044.67 to \$6,827.74. Accordingly, petitioner was properly due a refund for said year of \$1,216.93.

3. On July 16, 1980 the Audit Division issued a Statement of Audit Changes to petitioners for the year 1978 wherein petitioners' computed refund of \$1,216.93 was applied against unincorporated business tax of \$1,075.00 which was imposed on his finders fees income. A penalty of \$198.87, imposed under Section 685(c) of the Tax Law for underestimation of tax, was applied against petitioners' remaining overpayment of \$141.93, yielding a balance of penalty due of \$56.94.

4. On July 16, 1980 the Audit Division issued a second Statement of Audit Changes wherein petitioner's finders fees income for the years 1976 and 1977 was held subject to the unincorporated business tax. Pursuant to such statement, penalty under section 685(c) of the Tax Law was imposed for the years 1976 and 1977. Accordingly, a Notice of Deficiency was issued against petitioner on June 16, 1981 asserting unincorporated business tax for 1976 and 1977 of

\$1,571.63, plus penalty and interest for 1976, 1977 and 1978 of \$710.33¹ for a total due of \$2,281.96.

5. Petitioner alleged that his finders fees income derived during the years 1976, 1977 and 1978 is exempt from the imposition of unincorporated business tax. Accordingly, he petitioned for a redetermination of the deficiency asserted for 1976 and 1977, as well as for a refund of personal income tax of \$1,216.93 for 1978. Such overpayment, which resulted from his filing of the maximum tax schedule, was applied against the unincorporated business tax determined to be due for said year (see Finding of Fact "3" supra).

6. Petitioner was a member of the New York State Assembly from January 1, 1959 through July 21, 1978. During the three years at issue herein he served as Chairman of the Banking Committee. As such, it was his responsibility to oversee the legislation dealing with the financial institutions of New York State.

7. During the years at issue, petitioner was also employed by Federated Department Stores as Assistant Secretary.

8. The "finders fees" at issue were derived from one individual who was a personal friend of petitioner. Such individual was a prominent architect and real estate broker. As such, he continually had mortgage applications for his clients pending at various financial institutions. When such applications were being delayed he would ask petitioner to speak to the appropriate bank official in an attempt to have the mortgage application expedited. When petitioner's

¹ The Notice of Deficiency lists only the years 1976 and 1977, however, the Audit Division affirmatively stated that the balance of penalty due of \$56.94 for 1978 was incorporated into the \$710.33 reported as "total penalty &/or interest". It further stated that the Notice of Deficiency did not list 1978 due to a typographical error.

intervention was successful, he received remuneration which he characterized as a finders fee.

9. Petitioner testified that when he first started assisting his friend he assumed he was just doing a personal favor and never expected compensation.

10. In each instance petitioner's services consisted solely of placing a telephone call to the appropriate bank official. He was not involved with preparing applications or completing necessary paperwork with respect to the mortgages which he attempted to expedite.

11. Petitioner had no breakdown of the fees he received for said services. He initially testified that during the three year period at issue he made from ten to fifteen telephone calls on behalf of his friend of which seven to ten such calls were effective. Subsequently, during the hearing he testified that the number of calls during said period were "about fifteen or twenty".

12. Petitioner did not hold himself out to the public as being in the business of expediting mortgage applications.

13. On petitioner's 1978 return he reported "other income" of \$21,979.73 which was comprised of finders fees of \$31,500.00 reduced by business expenses of \$9,520.27. Such business expenses were related to his other employment and not incurred with respect to the finders fees at issue.

14. Petitioner contended that the activities at issue did not constitute the carrying on of an unincorporated business since such activities were carried on at an infrequent, irregular basis and the time devoted to such activities was insignificant.

CONCLUSIONS OF LAW

A. That in determining whether the activity or transactions involved constitute the carrying on of an unincorporated business, all the relevant

facts and circumstances must be considered. Generally, the continuity, frequency and regularity of activities, as distinguished from casual or isolated translations, and the amount of time, thought and energy devoted to the activities or translations are the factors which are to be taken into consideration. (20 NYCRR 203.1(a))


B. That although the time and energy devoted to petitioner's placing of telephone calls may have been insignificant, the continuity, frequency and regularity of such activities, as can be determined from petitioner's vague testimony regarding same, were of a sufficient degree to properly render such activities the carrying on of an unincorporated business. Accordingly, the "finders fees" at issue herein are subject to the imposition of unincorporated business tax.

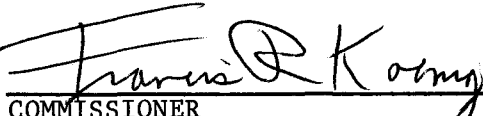
C. That the petition of George A. Cincotta is denied and the Notice of Deficiency issued June 16, 1981 is hereby sustained together with such additional penalties and interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 18 1984


PRESIDENT


COMMISSIONER


COMMISSIONER