

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Abe J. Lieber :

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 1974 & 1975.

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 31st day of January, 1984, he served the within notice of Decision by certified mail upon Abe J. Lieber, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Abe J. Lieber
c/o Alan C. Winick
Winick & Rich, 41 E. 60th St.
New York, NY 10022

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
31st day of January, 1984.

David Parchuck

James A. August
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Abe J. Lieber : 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 1974 & 1975. :

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 31st day of January, 1984, he served the within notice of Decision by certified mail upon Alan C. Winick, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Alan C. Winick
Winick & Rich
41 E. 60th St.
New York, NY 10022

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
31st day of January, 1984.

David Parchuck

James A. Haggerty
Authorized to administer oaths
pursuant to Tax Law section 174

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

January 31, 1984

Abe J. Lieber
c/o Alan C. Winick
Winick & Rich, 41 E. 60th St.
New York, NY 10022

Dear Mr. Lieber:

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, 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
Alan C. Winick
Winick & Rich
41 E. 60th St.
New York, NY 10022
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ABE J. LIEBER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1974	:	
and 1975.	:	

Petitioner, Abe J. Lieber, 14331 Hughes Lane, Dallas, Texas 75240, 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 1974 and 1975 (File No. 24692).

A formal hearing was held before Frank W. Barrie, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1982 at 1:15 P.M. with all briefs to be submitted by March 4, 1983. Petitioner appeared by Hecht and Company, C.P.A.'s (Neil Millman, Esq., of counsel) and Winick and Rich, Esqs. (Alan C. Winick, Esq.). The Audit Division appeared by Paul B. Coburn, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUES

I. Whether petitioner, as an international financing consultant, carried on an unincorporated business within New York State.

II. If so, whether petitioner maintained a regular place of business outside New York State so that he may allocate his unincorporated business net income.

III. Whether petitioner had reasonable cause for his failure to timely file unincorporated business tax returns and remit any unincorporated business tax due.

FINDINGS OF FACT

1. On December 9, 1977, the Audit Division issued a Statement of Audit Changes against petitioner, Abe J. Lieber, and his wife, Miriam Lieber, showing unincorporated business taxes due of \$40,585.55, plus penalties and interest, and \$20,932.67, plus penalties and interest, for the 1974 and 1975 taxable years, respectively. The following explanation was provided:

"The income from your business activities as a financial consultant is subject to unincorporated business tax under Article 23 of the New York Tax Law.

For tax years 1974 and 1975 penalty is assessed under Section 685(a) for late filing at 5% per month (maximum 25% and late payment at $\frac{1}{2}\%$ per month, maximum 25%).

For tax year 1974, penalty is assessed for underestimation of unincorporated business tax.

For tax year 1975 penalty is assessed under Section 685(c) for underestimation of personal income tax and unincorporated business tax."

The tax alleged due was based upon a determination that petitioner had net profit from an unincorporated business of \$747,919 and \$390,594 and unincorporated business taxable income of \$737,919 and \$380,594 for the 1974 and 1975 taxable years, respectively.

2. On October 13, 1978, the Audit Division issued a Notice of Deficiency against petitioner showing tax deficiencies of \$61,518.22 plus penalty and interest minus an amount paid or credit of \$346.95 for the 1974 and 1975 taxable years combined. A copy of the Statement of Audit Changes described in Finding of Fact "1", supra, was attached.

3. Petitioner filed jointly with his wife, Miriam Lieber, a Form IT-201, New York State Income Tax Resident Return for 1974 and reported New York taxable income of \$407,211. He reported income of \$2 from dividends, interest income of \$797 and business income principally from his services as a financial consultant of \$747,919.

Attached to his 1974 New York income tax return was a copy of his Schedule C, "Profit or (Loss) from Business or Profession", from his federal Form 1040 for 1974 showing net profit from petitioner's services as a financial consultant of \$778,733 on gross profit of \$1,046,284. Petitioner listed 7 Hathaway Road, Scarsdale, New York 10583, as his business address on this Schedule C.

4. Petitioner filed jointly with his wife, Miriam Lieber, a Form IT-201, New York State Income Tax Resident Return for 1975 and reported New York taxable income of \$80,024. Petitioner reported income of \$3 from dividends, interest income of \$410 and business income principally from his services as a financial consultant of \$390,594.

Attached to his 1975 New York income tax return was a copy of his Schedule C, "Profit or (Loss) from Business or Profession", from federal Form 1040 for 1975 showing net profit from petitioner's services as a financial consultant of \$393,252 on gross profit of \$589,616. Petitioner again listed 7 Hathaway Road, Scarsdale, New York 10583, as his business address.

5. During the years at issue, petitioner as an international financing consultant received substantial income from various Philippine corporations for his services in structuring multi-million dollar loans. Petitioner testified that "(t)he loans that were involved were usually, or ninety-nine percent of the time, for the purchase or acquisition of assets, and therefore I would

structure the transactions for them (the Philippine corporations), arrange for the financing as well as to handle the commercial negotiations involved in the asset acquisitions that underlined the loan transactions."

6. Petitioner testified that he had an office in the Philippines which was located at the Manila headquarters of Teletronic Systems, Inc. In a letter dated December 12, 1979, the Senior Vice President of Teletronic Systems, Inc., Lucie Quidato-Bantolino certified that the corporation "in the years 1974 and 1975, has provided Mr. Abe Lieber a office space coupled with secretarial services, telex and telephone facilities for his own use while he was doing financial advisory work for the company and its subsidiaries. Said facilities were given to him under a nominal fee chargeable against his financial advisory fees."

7. Petitioner did not conduct any of his business as an international financing consultant in New York. Rather, petitioner was in Manila for approximately eighteen weeks during the years at issue conducting such business. He also negotiated with foreign lending institutions in London, Hong Kong, Singapore, Geneva, Hamburg and Frankfurt and maintained his records concerning the international loan transactions in Hong Kong. Petitioner emphasized, in his credible testimony, that he had to conduct his business in a confidential manner and did not conduct business on the telephone or by telex but rather "on a face-to-face basis".

8. Petitioner did not report on Schedule E of his federal Form 1040 any rental income for the years at issue. Rather, it appears from the record that income from petitioner's real estate investment activities were included on the

same Schedule C on which he reported income from his international financing activities.¹

9. Petitioner relied upon professional advisors for the preparation of his tax returns for the years at issue.

CONCLUSIONS OF LAW

A. That Tax Law §701(a) provides in part as follows:

"A tax is hereby imposed for each taxable year on the unincorporated business taxable income of every unincorporated business wholly or partly carried on within this state."

B. That petitioner sustained his burden of proof under Tax Law §722 which incorporates §689 into Article 23 of the Tax Law, the unincorporated business tax article, to show that he did not wholly or partly carry on his business as an international financing consultant within New York State. It cannot be said that petitioner carried on such activity in New York merely because his home was in this state. In addition, petitioner's credible testimony overcame the fact that petitioner listed his Scarsdale, New York address as his business address on his Schedules C. Therefore, income derived from such activity is not subject to New York unincorporated business tax.

C. That the second and third issues herein are rendered moot.


¹ Petitioner testified that he did not know if all the gross income reported on his Schedule C was from his activities as an international financing consultant. However, he testified that various deductions on such Schedule were for expenses incurred in his real estate investment activities.

D. That the petition of Abe J. Lieber is granted, and the unincorporated business tax and the related penalty and interest asserted on the Notices of Deficiency, supra, are cancelled.

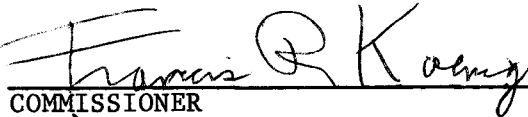
DATED: Albany, New York

STATE TAX COMMISSION

JAN 31 1984



PRESIDENT



COMMISSIONER



COMMISSIONER