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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL MILLER

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated  
Taxes under Article(s) 16 & 16A of the Business  
Tax Law for the (Year(s) 1958, 1959 & :  
1960

State of New York  
County of Albany

Martha Funaro , 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 7th day of February , 19 74, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Samuel Miller

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Samuel Miller

104-20 Queens Boulevard  
Forest Hills, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

7th day of February , 1974.

Joyce S. Van Patten

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL MILLER

:  
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AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or  
a Refund of Personal Income & Unincorporated  
Taxes under Article(s) 16 & 16A of the Business  
Tax Law for the (Year(s) 1958, 1959 &  
1960

State of New York  
County of Albany

Martha Funaro, 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 7th day of February, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Hyman E. Rosenberg,  
C.P.A.  
(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Hyman E. Rosenberg, C.P.A.  
152 West 42nd Street  
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

7th day of February, 1974

Joyce S. Van Patten

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

~~MILTON KOERNER, VICE PRESIDENT~~  
Mario A. Procaccino

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

February 7, 1974

Mr. Samuel Miller  
104-20 Queens Boulevard  
Forest Hills, New York

Dear Mr. Miller:

Please take notice of the **DETERMINATION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(s) **1138 & 1243** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **90 Days**  
from the date of this notice.

Any inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned.  
These will be referred to the proper party for  
reply.

Very truly yours,

**L. Robert Leisner**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Application :  
of :  
SAMUEL MILLER : DETERMINATION  
for Revision or Refund of Personal and :  
Unincorporated Business Taxes under :  
Articles 16 and 16-A of the Tax Law for :  
the Years 1958, 1959 and 1960. :

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Taxpayer's claims for revision or refund of unincorporated business tax were denied and the taxpayer filed a demand for a hearing. A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on March 3, 1971.

Taxpayer was represented by Hyman E. Rosenberg, C.P.A. and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Did the activities of Samuel Miller, as the rental sales manager of Kram Realty Company, Inc., in the years 1958, 1959 and 1960 constitute the operation of an unincorporated business under section 703 of the Tax Law, subject to unincorporated business tax?

FINDINGS OF FACT

1. Taxpayer, Samuel Miller, timely filed New York State income tax returns, but did not file New York State unincorporated business tax returns for the years 1958, 1959 and 1960.

2. On receipt of Federal changes disallowing deductions and expenses, the Income Tax Bureau asserted deficiencies for 1958, 1959 and 1960, in income taxes and unincorporated business taxes under assessment number AB 58474. The taxpayer applied for a revision of the unincorporated business tax assessment on the ground that he was an employee.

3. Beginning in 1956, taxpayer worked as a salesman for Kram Realty Company, Inc. In 1958, taxpayer became the manager of the rental department of the same company involving new rentals and rere rentals.

4. The taxpayer was subject to workmen's compensation and in 1958, he collected compensation insurance for a small claim.

5. Taxpayer used a Federal Schedule "C" for his expense covered by the override. There was no withholding of income or social security tax. He did some work from a desk at his home but had no office there.

6. The taxpayer was paid \$150 and later \$200 a week. Additionally, he received an override of all rental sales made by the rental department of the Kram Realty Company, Inc.

7. The taxpayer did not have a broker's license. The commission salesmen of Kram Realty Company, Inc. worked full time and were under the jurisdiction of the taxpayer. The taxpayer was in complete charge of all of the salesmen, the rental agents in his department. He had the right to hire or fire salesmen, not directly, but through his superiors.

8. His job was to break in the new men and to supervise the salesmen. He also contacted builders on a regular basis and when the brick work was up to the fourth floor, he would talk to them to obtain new listings of entire apartments. He also contacted building superintendents and rental agents and took them to lunch and worked with them to get new listings. These persons received gifts and gratuities. Taxpayer made gifts to secretaries to get the Kram Realty Company's leases signed before leases of other realty companies and agents. Some of his work was in the nature of public relations. He also ferreted out upcoming vacancies from many of these contacts he had made.

9. The taxpayer did very little selling. He could not sign contracts, but they were signed by the Kram Realty Company, Inc. The taxpayer incurred stationery expense for the salesmen, for

records of customers, and postage expense. He also paid for taxis for new men without cars, who wanted to show apartments to good prospects. The taxpayers expenses for gifts, gratuities, entertainment, postage, phone, stationery, etc., came from his override from the rental department of the Kram Realty Company, Inc.

10. The taxpayer got his listings of new apartments from the reporter services. The realty company listings were mostly in Queens. There was some work in New Jersey and Long Island.

11. The Kram Realty Company, Inc. stationery was used. All work originated from the Kram Realty Company, Inc. office.

12. The taxpayer worked as rental sales manager for Kram Realty Company, Inc. from 8:30 A.M. to 6:00 P.M. daily. He was obliged to work weekends because most rentals were made then. Occasionally he had a day or two off during the week.

13. Kram Realty Company, Inc. did not permit the taxpayer to work for anybody else.

14. The taxpayer's representative also cited section 440, 441, and 441-a of the Real Property Law.

Section 440 provides: "'Real estate salesman" means a person employed by a licensed real estate broker" to list for sale, rental, etc.

Section 441, paragraph 1-A, subparagraph (e) provides: "'The department may issue to an applicant for a salesman's license, upon the written request of his employer", a temporary rent collector's permit.

Section 441-a, the license and pocket card provision, requires the "name and business address of the broker by whom the salesman is employed."

#### CONCLUSIONS OF LAW

A. The taxpayer, as rental sales manager, was an employee of Kram Realty Company, Inc. His activities as such were not subject to unincorporated business tax. It is determined that there are no deficiencies in unincorporated business tax under assessment number AB 58474.

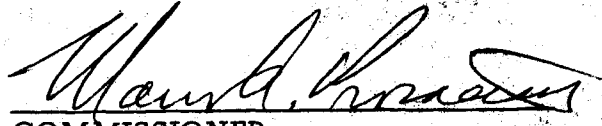
B. The deficiency in personal income tax is sustained.

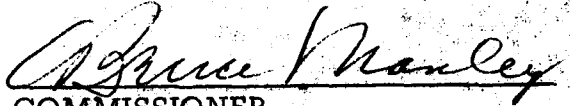
C. Pursuant to the Tax Law, interest shall be added to the  
total amount due until paid.

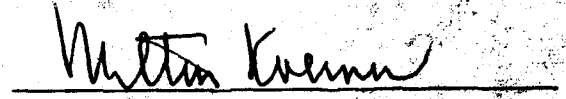
DATED: Albany, New York

February 7, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER