

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jay H. & Gloria S. Chananie :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income & UBT :
under Article 22 & 30 of the Tax Law :
for the Years 1967-1969 & 1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 14th day of March, 1980, he served the within notice of Decision by certified mail upon Jay H. & Gloria S. Chananie, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jay H. & Gloria S. Chananie
53 White Oak Ln.
Stamford, CT 06905

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
14th day of March, 1980.

Joanne Krapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jay H. & Gloria S. Chananie :
for Redetermination of a Deficiency or a Revision :
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Personal Income & UBT :
under Article 22 & 30 of the Tax Law :
for the Years 1967-1969 & 1971. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jay Vredenburg, 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 14th day of March, 1980, he served the within notice of Decision by certified mail upon Warren B. Kahn the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Warren B. Kahn
Buhler, Kind & Buhler
274 Madison Ave.
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
14th day of March, 1980.

Joanne Knapp

J. Vredenburg

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

March 14, 1980

Jay H. & Gloria S. Chananie
53 White Oak Ln.
Stamford, CT 06905

Dear Mr. & Mrs. Chananie:

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 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
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Warren B. Kahn
Buhler, Kind & Buhler
274 Madison Ave.
New York, NY 10016
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions :

of :

JAY H. CHANANIE and GLORIA S. CHANANIE : DECISION

for Redetermination of a Deficiency or for :
Refund of Personal Income Tax under Article 22 :
of the Tax Law for the Years 1967 and 1969, :
and of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years 1967, :
1968 and 1971.

Petitioners, Jay H. Chananie and Gloria S. Chananie, 53 White Oak Lane, Stamford, Connecticut, filed petitions for redetermination of a deficiency or for refund of personal income tax (1967 and 1969) and unincorporated business tax (1967, 1968 and 1971) under Articles 22 and 23 of the Tax Law (File Nos. 12558, 12559 and 14589).

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 October 4, 1977 at 9:15 A.M. Petitioners appeared by Buhler, King & Buhler (Warren B. Kahn, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUES

I. Whether the activities of petitioner Jay H. Chananie, a nonresident, constituted the conduct of an unincorporated business in New York and, if so, whether a basis existed for allocation of the excess of unincorporated business gross income over unincorporated business deductions for 1967, 1968 and 1971.

II. Whether the Notice of Deficiency issued to petitioners, nonresidents of New York, for personal income tax for 1967 and 1969, in which no allocation of income was allowed, should be sustained.

FINDINGS OF FACT

1. Petitioners, Jay H. Chananie and Gloria S. Chananie, his wife, failed to file New York State nonresident personal income tax returns for 1967, 1968, 1969 and 1971, on or before the prescribed date for filing such returns. The 1967, 1968 and 1969 returns were filed on November 24, 1972 and the 1971 return was filed February 23, 1973. On the 1967 return, an allocation of income to New York was made on the basis of 180 days worked in New York, out of a total of 263 days worked for that year. On the 1969 return, an allocation of income (in this instance a loss) to New York was made on the basis of 198 days worked in New York, out of a total of 253 days worked for that year.

2. Petitioner Jay H. Chananie did not file unincorporated business tax returns for 1967, 1968 and 1971.

3. On November 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, stating a personal income tax liability (based on Federal amounts) of \$862.50 for 1967 and \$393.78 for 1969, plus a penalty (Tax Law section 685(a)) of \$215.62 and interest of \$451.04, for a total of \$1,922.94. In accordance therewith, a Notice of Deficiency of the same date was issued to petitioners for tax, penalty and interest in the amounts stated above.

4. On November 25, 1974, the Income Tax Bureau also issued a Statement of Audit Changes against petitioner Jay H. Chananie, stating an unincorporated business tax liability for 1967 and 1968 of \$1,706.60 and \$1,932.15, respectively, penalties (pursuant to section 685(a) of the Tax Law) of \$909.69, and interest of \$1,327.35, for a total of \$5,875.79. In accordance therewith, a Notice of Deficiency of the same date was issued to petitioner Jay H. Chananie for tax, penalty and interest in the amounts stated above.

5. On July 29, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner Jay H. Chananie, stating an unincorporated business tax liability for 1971 of \$456.85, penalty of \$166.75 (pursuant to sections 685(a)(1) and (2) of the Tax Law), and interest of \$62.73, for a total of \$686.33. In accordance therewith, a Notice of Deficiency of the same date was issued to petitioner Jay H. Chananie for the amounts stated therein.

6. Petitioners have resided in Connecticut for 22 years and have maintained no place of abode in New York.

7. During the years at issue, petitioner Jay H. Chananie described his occupation as real estate sales on both his New York and Federal tax returns. He was a general partner in a number of partnerships engaged in the venture of developing and managing shopping centers. Other partners were admitted through contacts and were known to petitioner, who did not actively solicit their participation. Petitioner not only invested his money but also managed the venture from start to finish including : (a) surveying the market, (b) finding a site for construction of the shopping center, (c) acquiring options on the land, (d) selecting builders, (e) soliciting mortgages, (f) overseeing construction and coordination with tenants' specifications and opening date schedules, (g) negotiating with tenants, (h) closing mortgages and (i) day-to-day operations, e.g., repairs, collection of rents, promotions and insurance.

8. Tenants and prospective tenants for a particular shopping center were located all over the country; consequently, petitioner traveled extensively. The shopping centers constructed afforded premises for 30 to 35 tenants. None of the shopping centers were located in New York during the years in question.

9. Petitioner Jay H. Chananie maintained an office at 50 East 42nd Street, New York, New York. He took business deductions for said office on his Federal personal income tax returns for rent paid and for depreciation on leasehold improvements and property purchased therefor for each of the years here in issue. He hired a secretary to work at the office, for whom petitioner paid the salary. He also had another person who did some work at the office for part of the periods in issue. Part of the day-to-day business of managing the shopping centers was conducted from this office. The telephone was listed in petitioner Jay H. Chananie's name, for which he took the business deduction on his Federal personal income tax returns for that expense for each of the years here in issue.

10. Petitioner Jay H. Chananie submitted logs drawn from his diary and his secretary's diary, showing days worked within and without New York and days worked at his office in his Connecticut home for the years in question. He treated the den in his home as a home office for tax purposes. He did not bill the partnerships for the use of that office. The den was also used for purposes other than business operations.

11. No partnership returns for the periods in question were offered in evidence. However, petitioner's New York State personal income tax returns indicate that he experienced only losses from his interests in partnerships for the years at issue. No evidence was adduced regarding an office of a partnership, of which petitioner was a partner, outside New York, nor was evidence adduced regarding the location or creation of the various partnerships.

CONCLUSIONS OF LAW

A. That section 703(a) of the Tax Law defines an unincorporated business, in part, as any trade, business or occupation engaged in by an individual or partnership.

B. That the shopping centers, though leased and managed by petitioner, were the real property of several partnerships and, as such, do not come within the provisions of subdivision (e) of section 703 of the Tax Law.

C. That the unincorporated business activities of petitioner Jay H. Chananie, as a sole proprietor, were conducted from an office in New York, which constituted a regular place of business, and that the utilization of the den in his Connecticut home did not constitute a regular place of business in another state.

D. That the allocation of the excess of unincorporated business gross income over the unincorporated business deductions of an unincorporated business (carried on both within and without New York) is all allocable to New York, where the unincorporated business has no regular place of business outside New York State (section 703(a) of the Tax Law).

e. That petitioners are nonresidents of New York.

F. That section 632 of the Tax Law provides, in part, that the New York adjusted gross income of a nonresident individual includes all items of income, gain, loss and deduction, to the extent such items are derived from New York sources, and that income from New York sources includes income attributable to a business or occupation carried on in New York.

G. That section 632(c) of the Tax Law provides that if a business or occupation is carried on partly within and partly without New York, the apportionment and allocation of items of income, gain, loss and deductions derived from or connected with New York sources shall be determined under regulations of the Tax Commission.

H. That 20 NYCRR 131.4(a) provides that a business or occupation is carried on within New York by a nonresident:

...when he occupies, has, maintains or operates desk room, an office, ...where his affairs are systematically and regularly carried on, notwithstanding the occasional consumption of isolated transactions without the State. This definition is not exclusive. Business is carried on within the State if activities within the State in connection with the business are conducted in this State with a fair measure of permanency and continuity... If a taxpayer pursues an undertaking continuously as one relying on the profit therefrom for his income or part thereof, he is carrying on a business or occupation....

I. That 20 NYCRR 131.11 provides:

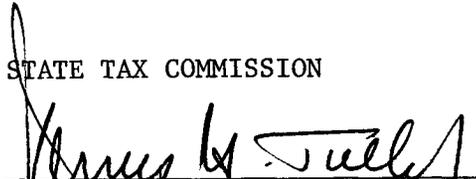
A business... or occupation (as distinguished from personal services as an employee) is carried on by a non-resident wholly within this State when the activities described in subdivision (a) of section 131.4 are carried on solely within this State and no such activities are carried on outside of this State, even though the non-resident or his representative travels outside of the State for purposes of buying, selling, financing or performing any duties in connection with the business, even though sales may be made to, or services performed for, or on behalf of, persons or corporations located outside of the State. If a nonresident individual carries on a business...or occupation wholly within this State all his items of income, gain, loss and deductions attributable to the business are derived from or connected with New York sources.

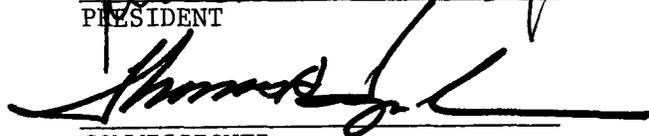
J. That the petitions of Jay H. Chananie individually and of Jay H. Chananie and Gloria S. Chananie are denied and the Notice of Deficiency issued to both petitioners on November 25, 1974 and the notices of deficiency issued to petitioner Jay H. Chananie on July 29, 1974 and November 25, 1974 are sustained.

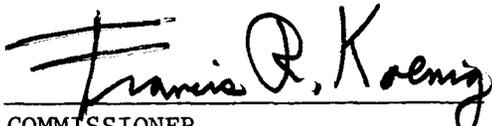
DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER