

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN and PHYLLIS SISKIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) or Period(s) 1966, :
1967 and 1968.

State of New York
County of Albany

Bruce Batchelor , 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 26th day of April , 1977, she served the within
Notice of Decision by (certified) mail upon Marvin and Phyllis
Siskin ~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Marvin Siskin
1760 North East 56th Street
Fort Lauderdale, Florida
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

26th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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1967 & 1968.

State of New York
County of Albany

Bruce Batchelor , 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 26th day of April , 1977 , she served the within
Notice of Decision by (certified) mail upon Jerome Perl
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Jerome Perl, P.A.
37-39 Carroll Street
Binghamton, 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 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

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Bruce Batchelor

Just Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 26, 1977

TELEPHONE: (518) **457-1723**

Mr. and Mrs. Marvin Siskin
1760 North East 56th Street
Fort Lauderdale, Florida

Dear Mr. and Mrs. Siskin:

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

Please take further notice that pursuant to
Section(s) **690 & 722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from the date of this notice.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
MARVIN and PHYLLIS SISKIN
for Redetermination of Deficiency or
for Refund of Personal Income and
Unincorporated Business Taxes under
Articles 22 and 23 of the Tax Law
for the Years 1966, 1967 and 1968.

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DECISION

Petitioners, Marvin and Phyllis Siskin, 1760 North East 56th Street, Fort Lauderdale, Florida, have filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1966, 1967 and 1968. (File No. 8-12205543). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Governmental Civic Center, Binghamton, New York, on October 19, 1976, at 10:45 A.M. Petitioners appeared by Jerome Perl, P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Richard Kaufman, Esq. of counsel).

ISSUE

Was petitioner, Marvin Siskin's wife and/or son bona fide employees of his business and if so, what was the compensation actually paid to them?

FINDINGS OF FACT

1. Petitioners, Marvin and Phyllis Siskin, filed New York State combined income tax resident returns for the years 1966, 1967 and 1968. Marvin Siskin filed New York State unincorporated business tax returns for 1966, 1967 and 1968.

2. On audit, the Income Tax Bureau disallowed the wages of petitioner's wife, Phyllis and son, Mark, as an expense for unincorporated business tax purposes and Notice of Deficiencies dated July 27, 1970, were issued. The wages were disallowed because there was no proof of any cash or check expenditure being made.

3. Petitioner, Marvin Siskin, operated an unincorporated business engaged in the distribution and wholesale of sundries during 1966, 1967 and 1968. The business was located in the petitioner's home. During these years, petitioner, Phyllis Siskin, performed office and clerical duties for her husband's business. Petitioner, Marvin Siskin's son, Mark, stocked shelves and received merchandise for the business. On the unincorporated business tax returns, business deductions were claimed for wages paid to Phyllis Siskin in the amount of \$3,000.00 and to Mark Siskin in the amount of \$1,200.00 for each year.

4. Petitioner, Marvin Siskin's net business income, after deducting wages for his wife and son, was \$9,427.99 in 1966, \$10,546.18 in 1967 and \$15,518.26 in 1968.

STATE OF NEW YORK
STATE TAX COMMISSION

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of Personal Income & Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1966, 1967 and 1968

State of New York
County of Albany

Bruce Batchelor¹, 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 12th day of May, 19 77, she served the within
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Sworn to before me this

12th day of May, 19 77

Bruce Batchelor

Just Mack

TA-26 (4-76) 25M

STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



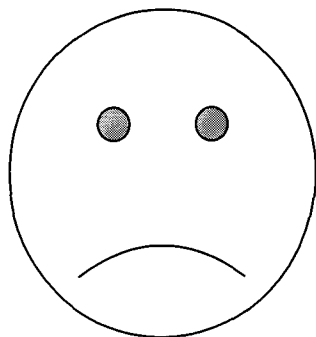
UNCLAIMED



Mr. and Mrs. Marvin Siskin
1760 North East 56th Street
Fort Lauderdale, Florida

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CORRECTION FOLLOWS



NOTE: THE FOLLOWING
DOCUMENT(S) ARE BEING REFILMED
TO ENSURE CLARITY

PHOTO MICROGRAPHICS INC.

STATE OF NEW YORK

STATE TAX COMMISSION

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	:	
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MARVIN and PHYLLIS SISKIN	:	DECISION
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4. Petitioner, Marvin Siskin's net business income, after deducting wages for his wife and son, was \$9,427.99 in 1966, \$10,546.18 in 1967 and \$15,518.26 in 1968.

5. Petitioner, Phyllis Siskin, held a part-time job as a teacher during these years. She earned \$2,666.56 in 1966, \$3,000.00 in 1967 and \$3,000.00 in 1968 from this employment. Mark Siskin was also employed on a part-time basis during these years as well as being a full-time high school student.

6. Petitioner, Marvin Siskin, did not issue withholding tax statements to his wife or son.

7. Petitioner, Marvin Siskin, introduced no evidence that any wages were actually paid to his wife, Phyllis or son, Mark Siskin.


CONCLUSIONS OF LAW

A. That section 162(a) of the Internal Revenue Code and the implementing Regulations section 1.162-7 require that in order for compensation to be deductible it must be paid or incurred.


B. That the petitioners failed to carry the burden of proof as required by section 689(e) of the Tax Law that any wages were, in fact, paid or incurred or that the spouse or son was a bona fide employee of the husband.

C. That the petition of Marvin and Phyllis Siskin is denied and the Notice of Deficiencies issued July 27, 1970 are sustained.

DATED: Albany, New York
April 26, 1977

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

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Bruce Batchelor

Janet Mock

TA-26 (4-76) 25M

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



UNCLAIMED



Mr. and Mrs. Marvin Siskin
1760 North East 56th Street
Fort Lauderdale, Florida

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STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 26, 1977

TELEPHONE: (518) **457-1723**

REMAILED: May 12, 1977

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will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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DATED: Albany, New York
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Fort Lauderdale, Florida

