

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAY S. LANDESMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated Bus.:
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) or Period(s) :
1969, 1970 and 1971

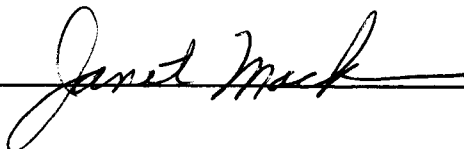
State of New York
County of Albany

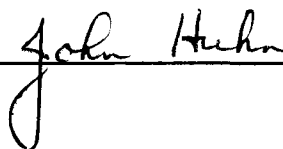
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978 , she served the within
Notice of Decision by (certified) mail upon Jay S. Landesman
~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jay S. Landesman
c/o Morris P. Silver, CPA
45 North Station Plaza
Great Neck, NY 11021
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.
~~XX~~

Sworn to before me this

14th day of February , 1978.





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STATE TAX COMMISSION

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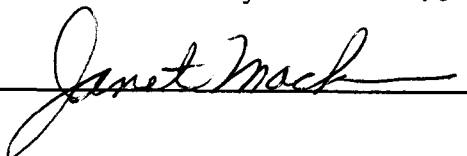
State of New York
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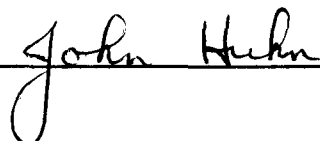
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978 , she served the within
Notice of Decision by (certified) mail upon Morris P. Silver, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Morris P. Silver, CPA
45 North Station Plaza
Great Neck, NY 11021
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That deponent further says that the said addressee is the (representative
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last known address of the (representative of the) petitioner.

Sworn to before me this

14th day of February , 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
February 14, 1978

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Jay S. Landesman
c/o Morris P. Silver, CPA
45 North Station Plaza
Great Neck, NY 11021

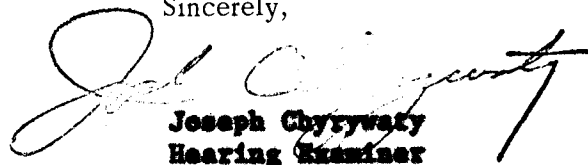
Dear Mr. Landesman:

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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JAY S. LANDESMAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1969, 1970 and 1971.	:	

Petitioner, Jay S. Landesman, c/o Morris P. Silver, CPA, 45 North Station Plaza, Great Neck, New York 11021, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1969, 1970 and 1971 (File No. 13757).

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 23, 1977 at 9:15 A.M. The petitioner appeared by Morris Silver, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner's failure to timely file his 1971 New York State income tax return and to timely pay New York State

income tax due for said year, was due to reasonable cause and not due to willful neglect.

II. Whether the interest imposed against petitioner was properly applied and/or computed for the tax year 1971.

III. Whether petitioner's activities during the years 1970 and 1971 constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Jay S. Landesman, filed New York State income tax returns for the years 1969, 1970 and 1971. The return filed by petitioner for the year 1971 was filed after the due date. He did not file New York State unincorporated business tax returns for said years.

2. On December 22, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, allowing the claimed, net operating-loss carryback from the years 1972 and 1973 to the years 1969, 1970 and 1971. It also made adjustments pursuant to Federal audit changes for the tax year 1971. Interest on the 1971 tax was computed on the balance due prior to the allowance for refund. Penalty was also asserted under sections 685(a)(1) and 685(a)(2) of the Tax Law for late filing. Said Statement further asserted unincorporated business tax to be due for the years 1970

and 1971 on income derived from petitioner's activities. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$3,910.03.

3. Petitioner did not contest the adjustments pertaining to the personal income tax portion of the deficiency. However, he maintained that interest and penalties imposed should have been computed after the allowance for refund, since his net liability was significantly reduced. He further maintained that the late filing was caused by his belief that since his losses in 1972 and 1973 were so large, by April 15, 1973 his liability would be completely eliminated after the carryback. In addition, at the time, he did not have the funds with which to pay the tax.

4. Jay S. Landesman is an attorney with both a university and law school education normally associated with the practice of law. He is a licensed attorney admitted to practice in the courts of the State of New York and in the Federal courts.

5. During the years in question, petitioner's activities involved the creation, review, and provision of advisory services with respect to "tax shelters." His work included advising clients and potential clients of the legal and tax ramifications of investments. He also advised his clients on the taxability and legal effects of proposed mergers and acquisitions. A substantial amount

of the income received by him as fees during the years 1970 and 1971, was from either sellers, lenders or parties other than the actual client.

6. Petitioner contended that he was involved in estate and gift planning, torts, contract review and negotiation, and the defense of clients in legal actions. However, he did not have any record of the amount of fees received by him in connection with the aforesaid activities.

7. During the years 1970 and 1971, Jay S. Landesman was not active in any professional associations. His stationery letterhead was entitled "Jay Landesman and Associates, Financial Consultants" with an office located in his home at 18 East 81st Street, New York, New York. He was not listed in the telephone directory as an attorney for said years.

8. Petitioner contended that his activities during the years in question involved the practice of law and, as such, were exempt from unincorporated business tax.

CONCLUSIONS OF LAW

A. That petitioner, Jay S. Landesman, did not have reasonable cause for failing to timely file his 1971 New York State income tax return; therefore, the penalty imposed pursuant to section 685(a)(1) of the Tax Law is sustained.

B. That petitioner did not have reasonable cause for failing to pay the amount of tax shown to be due on his 1971 New York State income tax return; therefore, the penalty imposed pursuant to section 685(a)(2) of the Tax Law is sustained.

C. That the interest imposed against petitioner for the year 1971 was properly applied and computed in accordance with section 684(f) of the Tax Law.

D. That petitioner was not engaged in the practice of law, but rather utilized his legal knowledge in the business of rendering advice to clients with respect to financial investments.

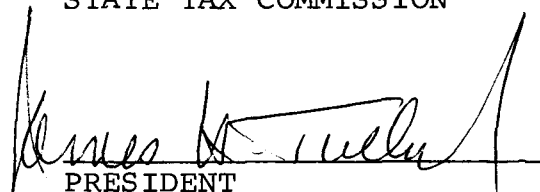
E. That the activities performed by the petitioner for the years 1970 and 1971, although requiring special knowledge and experience, did not constitute the practice of law or any other profession exempt from unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

F. That the petition of Jay S. Landesman is denied and the Notice of Deficiency issued on December 22, 1975 in the sum of \$3,910.03 is sustained, together with such additional interest and penalty as may be lawfully owing.

DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER