

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Joseph Brown :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of  
Personal Income & UBT :  
under Article 22 & 23 of the Tax Law  
for the Year 1973. :

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Joseph Brown, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

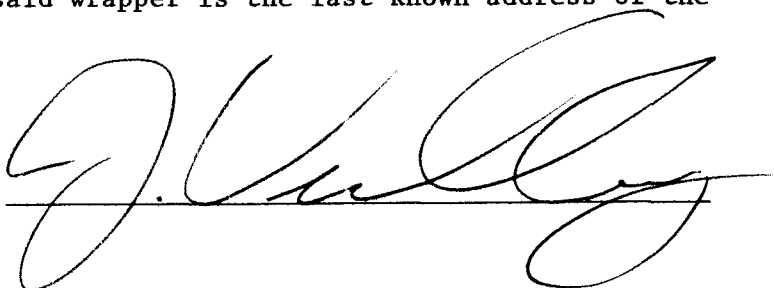
Joseph Brown  
5610 14th Ave.  
Brooklyn, NY 11219

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  
17th day of October, 1980.

Deborah A Bank

A large, stylized handwritten signature, likely of Jay Vredenburg, written in dark ink over a horizontal line.

STATE OF NEW YORK  
STATE TAX COMMISSION

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for Redetermination of a Deficiency or a Revision :  
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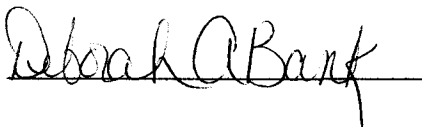
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 17th day of October, 1980, he served the within notice of Decision by certified mail upon Moses Fuchs the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

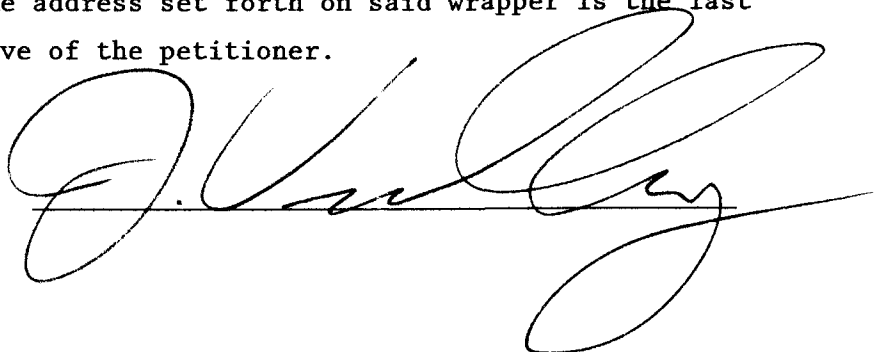
Mr. Moses Fuchs  
1910 Avenue J  
Brooklyn, NY 11230

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  
17th day of October, 1980.





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

October 17, 1980

Joseph Brown  
5610 14th Ave.  
Brooklyn, NY 11219

Dear Mr. Brown:

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  
Moses Fuchs  
1910 Avenue J  
Brooklyn, NY 11230  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOSEPH BROWN	:	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 Year 1973.	:	

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Petitioner, Joseph Brown, 5610 14th Avenue, Brooklyn, New York 11219, 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 year 1973 (File No. 18061).

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 11, 1980 at 2:45 P.M. Petitioner appeared by Moses Fuchs, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel J. Freund, Esq., of counsel).

ISSUES

I. Whether petitioner's, Joseph Brown, taxable income from self-employment was understated for unincorporated business and personal income taxes for subject year.

II. Whether petitioner, Joseph Brown, if found to have understated his unincorporated business income, is subject to a negligence penalty pursuant to section 685(b) of the Tax Law.

III. Whether petitioner's, Joseph Brown, claimed deductions for utilities and insurance expenses were incurred in connection with his unincorporated business.

IV. Whether petitioner's, Joseph Brown, claimed deduction for contributions was substantiated.

FINDINGS OF FACT

1. Petitioner, Joseph Brown, filed a New York State Income Tax Resident Return for subject year. Petitioner also filed an unincorporated business tax return for said year.

2. On March 21, 1977, the Audit Division issued a Notice of Deficiency against petitioner asserting personal income tax of \$692.06, unincorporated business tax of \$390.93, section 685(b) penalty of \$54.15 and interest of \$246.50, for a total of \$1,383.70. The Notice was issued on the basis that petitioner understated the income from his unincorporated business; that a portion of the utilities and insurance expenses were deemed personal rather than attributable to the unincorporated business, and a portion of petitioner's contributions were disallowed as unsubstantiated.

3. The Audit Division based its determination of unincorporated business income by use of the "Source and Application of Funds" method, as follows:

APPLICATION AND SOURCE OF FUNDS

	<u>1973</u>
<u>REQUIREMENTS</u>	
Deposits to Personal Checking	\$17,705.21
Investments in Partnerships	10,000.00
Tuition (as per account)	1,200.00
	<u>\$28,905.21</u>
<u>SOURCES</u>	
Cash Drawing	\$27,595.08
Dividends Received Directly	110.00
Gross Rent	6,300.00
	<u>\$34,005.08</u>
(Cash Available)	\$ 5,099.87
Add: Cash Living	12,000.00
Additional Funds Required for Living Expenses	<u>\$ 6,900.13</u>

4. Petitioner contended that for subject year, cash drawings from business was \$28,615.81, and not \$27,595.07 as shown on the above schedule. He also contended that all home expenditures such as principal and interest on mortgage, insurance, taxes, electric and gas were paid by check; that gasoline for the automobile was paid for by check, and that personal expenses, as well as the bulk of contributions, were paid by check.

In support of his contention, the petitioner referred to the examiner's disallowance of utilities in the amount of \$360.00 and insurance of \$288.00 on the basis that they were deemed personal rather than business expenses.

5. The Audit Division's "Source and Application of Funds" schedule did not analyze what the petitioner did with his income, nor determine petitioner's cash requirements. In lieu thereof, they estimated a figure of \$12,000.00 as the amount of cash required by petitioner without any explanation.

6. Petitioner, Joseph Brown, did not submit any credible evidence to show that payment for utilities and insurance were business related expenditures.

7. Petitioner failed to submit any documentary evidence with respect to disallowed contributions.

#### CONCLUSIONS OF LAW

A. That the estimated cash required for petitioner's living expenses for subject year was not supported by the "Source and Application of Funds" schedule, as it failed to establish and/or approximate what petitioner did with the income.

That the burden of proof to overcome the assessments rests upon the petitioner; and that, if there are facts or reasonable inferences to be drawn from the record to support the determination, the assessment must be confirmed (Matter of Young v. Bragalini, 3 N.Y.2d 602, 170 N.Y.S. 2d 805). On the other

hand, the legislature did not intend to permit the assessment of additional tax without any basis for so doing, and for the sole purpose of collecting additional taxes. Thus, it is required to confirm the determination if there are facts to sustain the determination which indicated that the assessments were not arbitrary or capricious (People ex rel. Freebor & Co. v. Graves, 257 A.D. 587, 14 N.Y.S.2d 4; Matter of Calder v. Graves, 261 A.D. 90, 24 N.Y.S.2d 797, Affd. 286 N.Y. 643). Matter of Hillman v. State Tax Commission, 30 A.D.2d 362, 292 N.Y.S.2d 233.

That there are no facts to support the "Source and Application of Funds" schedule, relied upon by the Audit Division in its finding of the estimated cash required to petitioner's living expenses, therefore, the additional cash for living expense was erroneously determined and does not constitute additional unincorporated business income or additional personal income.

B. That as petitioner, Joseph Brown, has not been found to have understated his unincorporated business income, then, penalty, pursuant to section 685(b) of the Tax Law, is abated.

C. That petitioner, Joseph Brown, failed to sustain the burden of proof pursuant to sections 722 and 689(e) of the Tax Law; to show that expenses claimed for utilities and insurance were incurred in his unincorporated business.

D. That petitioner, Joseph Brown, failed to sustain the burden of proof pursuant to sections 722 and 689(e) of the Tax Law; to show that contributions claimed on both the personal income tax and unincorporated business tax returns were, in fact, paid.

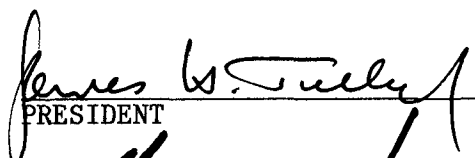
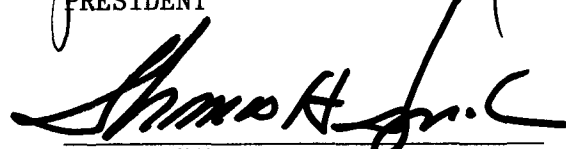
E. That the petition of Joseph Brown is granted to the extent provided in Conclusions of Law "A" and "B", and the Audit Division is hereby directed

to modify accordingly the Notice of Deficiency issued March 21, 1977; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 17 1980

  
PRESIDENT  
  
COMMISSIONER

  
COMMISSIONER