

STATE OF NEW YORK
STATE TAX COMMISSION

_____ :
In the Matter of the Petition :
of :
Mervin I. Robins :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Unincorporated Business Tax :
under Article 23 of the Tax Law :
for the Year 1972. :
_____ :

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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Mervin I. Robins, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

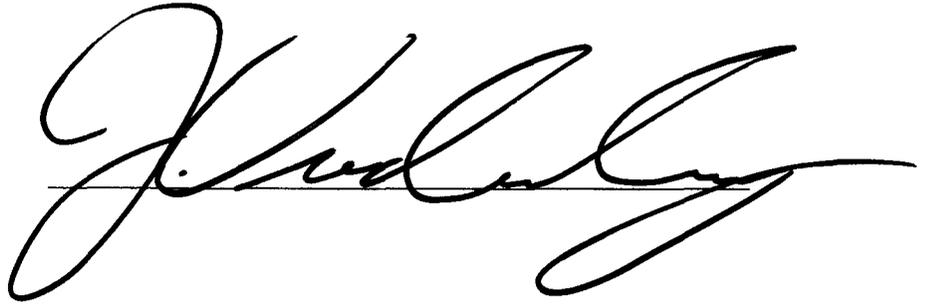
Mervin I. Robins
18 Bayside Dr.
Point Lookout, NY 11569

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
21st day of March, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Mervin I. Robins :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Unincorporated Business Tax :
under Article 23 of the Tax Law :
for the Year 1972. :

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 21st day of March, 1980, he served the within notice of Decision by certified mail upon Charles Z. Goldstein 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. Charles Z. Goldstein
11 Park Pl.
New York, NY 10007

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
21st day of March, 1980.

Joanne Krupp

J. Vredenburg

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

March 21, 1980

Mervin I. Robins
18 Bayside Dr.
Point Lookout, NY 11569

Dear Mr. Robins:

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) 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
Charles Z. Goldstein
11 Park Pl.
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MERVIN I. ROBINS : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Year 1972. :

Petitioner, Mervin I. Robins, 455 Paradise Island Boulevard, Hallandale, Florida 33009, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1972 (File No. 16267).

On November 27, 1978, petitioner, Mervin I. Robins, advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission based on the entire record contained in the file.

ISSUE

Whether petitioner's business activities constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Mervin I. Robins, and his wife, Matilda Robins, timely filed a New York State Combined Income Tax Return for 1972 on which he reported wages of \$13,000.00 and other income of \$10,000.00. He did not file an unincorporated business tax return for said year.

2. The Income Tax Bureau contended that petitioner was engaged in the carrying on of an unincorporated business during 1972 and that his wages and other income were subject to unincorporated business tax. On October 27, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner

for \$536.97 in unincorporated business tax, plus \$102.06 in interest, for a sum of \$639.03.

3. Petitioner paid the unincorporated business tax, plus interest and immediately thereafter filed form IT-113X, Claim for Credit or Refund of Personal Income Tax and/or Unincorporated Business Tax, claiming a refund of \$639.03. On June 28, 1976, the Audit Division issued a Notice of Disallowance denying said refund on the grounds that petitioner was subject to unincorporated business tax as a consultant.

4. Petitioner contended that part of his income was derived from services he rendered as an employee of Emar Publications, Inc. for which he received \$13,000.00 and that the balance of income was received from Program Service, Inc. and represented a lump-sum payment to him as a consultant.

5. Petitioner did not submit documentary or other satisfactory evidence to show that business expenses of \$4,575.00 were related to income reported on his return, nor did he submit any evidence regarding the nature of services rendered, the supervision and control exercised by principals over his activities and the division of time between his two principals.

CONCLUSIONS OF LAW

A. That petitioner, Mervin I. Robins, has failed to sustain the burden of proof imposed by section 689(e) of the Tax Law necessary to show that the services rendered by him during the year 1972 on behalf of Emar Publications, Inc. were not performed in furtherance of his other business activities as a consultant, and that said services constituted part of a business regularly carried on in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the business activities in which petitioner was engaged and the services which he rendered during 1972 on behalf of Program Service, Inc.

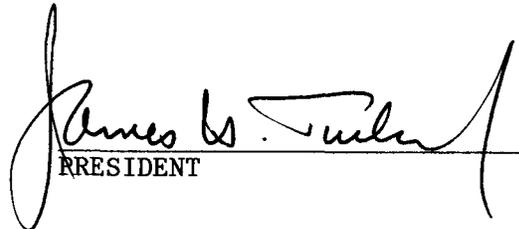
constituted the carrying on of an unincorporated business and the income he derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) of the Tax Law.

C. That the petition and the claim for refund of Mervin I. Robins for 1972 are denied.

DATED: Albany, New York

MAR 21 1980

STATE TAX COMMISSION


RESIDENT


COMMISSIONER


COMMISSIONER