

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Jack Cohen

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 Years 1972 & 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 13th day of March, 1981, he served the within notice of Decision by certified mail upon Jack Cohen, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jack Cohen
827 Jerome Ct.
Westbury, NY 11590

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
13th day of March, 1981.

Carrie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Jack Cohen :

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 Years 1972 & 1973. :

State of New York
County of Albany

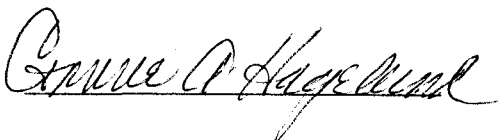
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 13th day of March, 1981, he served the within notice of Decision by certified mail upon James Lupo the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

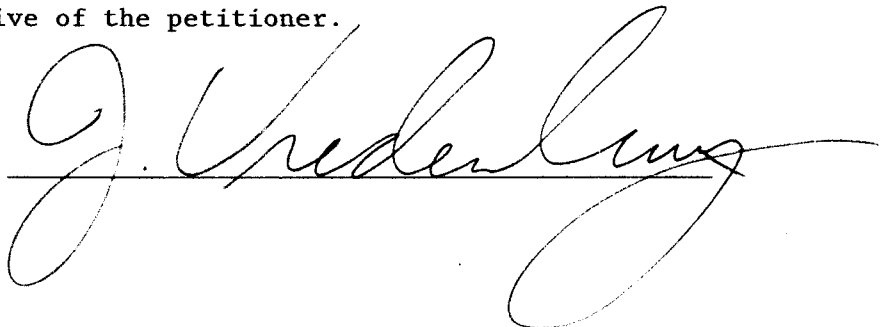
Mr. James Lupo
28 Whittier Dr.
Greenlawn, NY 11740

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
13th day of March, 1981.





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

March 13, 1981

Jack Cohen
827 Jerome Ct.
Westbury, NY 11590

Dear Mr. Cohen:

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
James Lupo
28 Whittier Dr.
Greenlawn, NY 11740
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JACK COHEN	:	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 1972 and 1973.	:	

Petitioner, Jack Cohen, 827 Jerome Court, Westbury, New York 11590, 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 1972 and 1973 (File No. 18231).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 23, 1980 at 9:15 A.M. Petitioner, Jack Cohen, appeared by James Lupo, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

- I. Whether income received by petitioner from Copak Fur Corporation and Bucks County Furs, Inc. is subject to the unincorporated business tax.
- II. Whether penalties were properly imposed under section 685(a) (1), 685(a) (2) and 685(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Jack Cohen, and Helen Cohen, his wife, filed New York State combined income tax resident returns for the years 1972 and 1973, on which petitioner reported other income of \$26,711.00 and \$52,404.00, respectively. Petitioner, Jack Cohen, did not file unincorporated business returns

for the years 1972 and 1973.

2. On January 24, 1977, the Audit Division issued a Notice of Deficiency for personal income tax of \$120.00 and unincorporated business tax of \$3,251.33, plus penalties and interest. Attached thereto was an explanatory Statement of Audit Changes, which indicated:

- (a) that unreported Federal audit adjustments were imposed for the year 1973, along with a capital loss adjustment of \$500.00. This item was conceded by petitioner and is not at issue.
- (b) that the "other income" reported for the years 1972 and 1973 was held subject to the unincorporated business tax.
- (c) that penalties were imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law "for failure to file and pay unincorporated business tax".
- (d) that for 1972 a penalty was imposed under section 685(c) of the Tax Law "for underestimation of tax".

3. Petitioner, Jack Cohen, was the sole stockholder and corporate officer of Copak Fur Corporation (Copak), a business organized and located in the City and State of New York.

4. Petitioner, Jack Cohen, was compensated \$22,807.00 for the year 1972 and \$52,000.00 for the year 1973 for his activities as president of Copak. This compensation was paid without the withholding of any payroll taxes, and was reported on the Federal corporate tax returns and New York State franchise tax reports filed for the years 1972 and 1973.

5. Petitioner, Jack Cohen, was a stockholder of Bucks County Furs, Inc. and received \$3,904.00 in 1972 and \$404.00 in 1973, which petitioner contended represented a percentage of its profits. However, no documentary evidence was submitted indicating the source, nature and character of this income.

6. Although petitioner did not concede the penalty imposed under section 685(c) of the Tax Law, no oral or documentary evidence was submitted challenging it. The New York tax return filed for the year 1972 indicated that petitioner's

total personal income tax liability was \$3,767.00, that \$704.00 was withheld from his salary income.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Jack Cohen, by the Copak Fur Corporation during the years 1972 and 1973 constituted compensation for services rendered as a corporate officer; and such income is not subject to the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That although petitioner, Jack Cohen, has failed to sustain the burden of proof in establishing that the income of \$3,904.00 and \$404.00, received in 1972 and 1973, respectively, from Bucks County Furs, Inc., was not subject to the unincorporated business tax, such income is insufficient to generate an unincorporated business tax liability under Article 23 of the Tax Law and accordingly the issue is moot.

C. That petitioner, Jack Cohen, was required to file and pay a declaration of estimated tax for the year 1972 pursuant to section 655 of the Tax Law and, therefore, the penalty pursuant to section 685(c) of the Tax Law was properly imposed. The Audit Division is directed to recompute the penalty for personal income tax only.

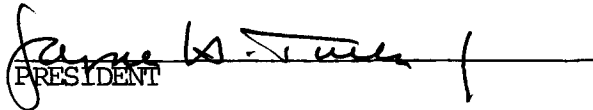
D. That the petition of Jack Cohen is granted to the extent that unincorporated business tax is cancelled in full, along with its related penalties imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law.

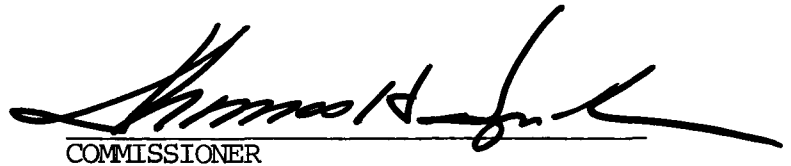
E. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued January 24, 1977, and that except as so directed, the petition is in all other respects denied.

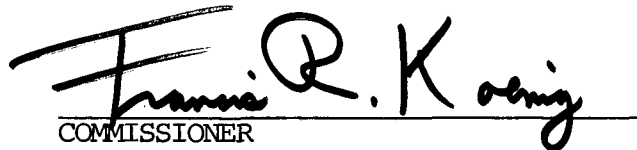
DATED: Albany, New York

STATE TAX COMMISSION

MAR 13 1981


PRESIDENT


COMMISSIONER


COMMISSIONER