

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

James C. Bell

:

:

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 1971 & 1972.

State of New York  
County of Albany

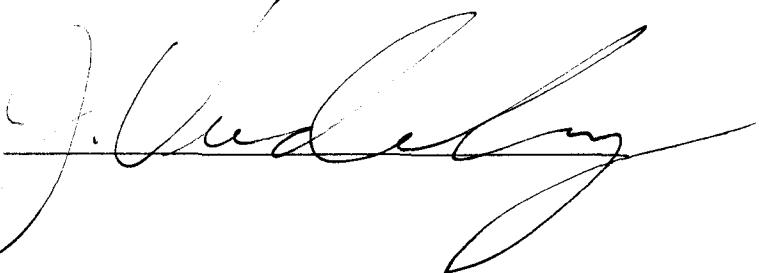
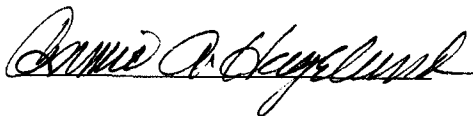
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of April, 1982, he served the within notice of Decision by certified mail upon James C. Bell, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

James C. Bell  
3690 Broadway  
New York, NY 10031

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  
23rd day of April, 1982.



STATE OF NEW YORK  
STATE TAX COMMISSION

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& UBT under Article 22 & 23 of the Tax Law for the:  
Years 1971 & 1972.

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 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Joseph I. Stone the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Joseph I. Stone  
277 Broadway  
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  
23rd day of April, 1982.

*Rennie A. [Signature]*

*J. Vredenburg*

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

April 23, 1982

James C. Bell  
3690 Broadway  
New York, NY 10031

Dear Mr. Bell:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Joseph I. Stone  
277 Broadway  
New York, NY 10007  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JAMES C. BELL	:	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 1971 and 1972.	:	

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Petitioner, James C. Bell, 3690 Broadway, New York, New York 10031, 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 1971 and 1972 (File No. 16009).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 19, 1978 at 9:30 A.M. Petitioner appeared by Joseph I. Stone, Esq. The Audit Division appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUE

Whether compensation in the form of salary plus commission, bonus, and/or percentage earned by petitioner for services as a messenger in an illegal lottery-type gambling operation, constituted income from an unincorporated business.

FINDINGS OF FACT

1. Petitioner, James C. Bell, acted as a pick-up man in an illegal lottery-type gambling operation conducted within New York State throughout 1971 and 1972.

2. Petitioner's service to this gambling or numbers operation was that of messenger. Individuals, known as number writers, would record and collect bets. Others, known as bankers or controllers, would accept the bets written up by all the number writers within a given territory and compute the winners. As a pick-up man, petitioner would transport betting slips and bets from the writers to the bankers and then return winnings to the writers who wrote winning tickets.

3. Petitioner was compensated by the bankers on a salary plus commission or bonus basis.

4. Petitioner acted under the direction and control of the bankers (See: James Bell v. Commissioner, 35 TCM 33,861 (M), involving petitioner's 1971 Federal income tax).

5. On June 28, 1976 a Notice of Deficiency was issued against petitioner for unincorporated business tax due of \$611.16 for 1971 and \$694.32 for 1972 and penalties for underestimation of tax of \$48.79 for 1971 and \$94.07 for 1972, plus interest.

At the hearing, petitioner's representative conceded to an increase in personal income tax apparently on the basis of the decision in petitioner's case before the United States Tax Court (supra). There is, however, no Notice of Deficiency or other evidence in the record pertaining to personal income tax and it is deemed not at issue herein.

CONCLUSIONS OF LAW

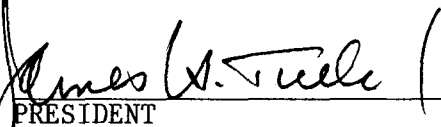
A. That the activities of petitioner, James C. Bell, as a pick-up man for an illegal numbers operation were services performed as an employee of the numbers bankers and are not deemed to constitute an unincorporated business regularly carried on by him (section 703(b) of the Tax Law; see also United States v. Calamaro, 354 U.S. 351).


B. That the petition of James C. Bell is granted to the extent that the Notice of Deficiency for unincorporated business tax is cancelled; as noted above, personal income tax was not at issue herein and this decision does not apply to such tax.

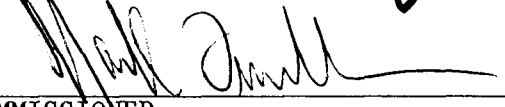
DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION

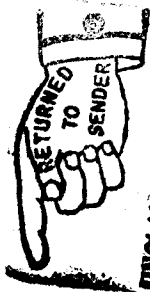
  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

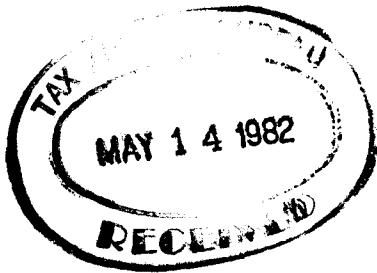
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STATE OF NEW YORK  
Tax Commission  
TAX APPEALS BUREAU  
STATE CAMPUS  
NEW YORK, N. Y. 12227



UNCLAIMED  
NEW YORK, N.Y. 10031

James C. Bell  
3690 Broadway  
New York, NY 10031



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

April 23, 1982

James C. Bell  
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Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Joseph I. Stone  
277 Broadway  
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STATE OF NEW YORK

STATE TAX COMMISSION

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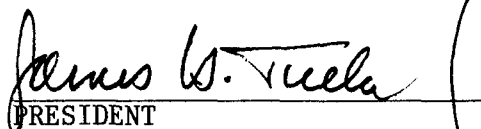
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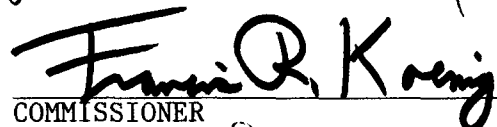
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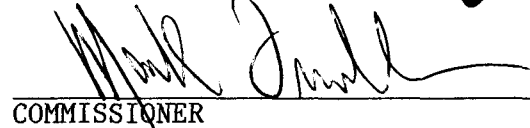
DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER