

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD SCHOENBERG

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business :  
Taxes under Article(s) 23 of the  
Tax Law for the (Year(s) 1962 :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Martha Funaro , 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 17th day of September , 19 71, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Howard  
Schoenberg (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Howard Schoenberg  
336 Lyncroft Road  
New Rochelle, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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 September , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of

HOWARD SCHOENBERG : DECISION

for Redetermination of Deficiency or  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law  
for the Year 1962. :

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Petitioner, Howard Schoenberg, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1962. (File No. 3-8813298). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on March 24, 1971, at 1:30 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of Counsel).

#### ISSUE

I. Did the selling activities of petitioner, Howard Schoenberg, during the year 1962, constitute the carrying on of an unincorporated business?

#### FINDINGS OF FACT

1. Petitioner, Howard Schoenberg, and his wife filed a New York State income tax resident return for the year 1962. He did not file an unincorporated business tax return for said year.

2. On February 28, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Howard Schoenberg, imposing unincorporated business tax upon the income received by him from his activities as a food salesman during the year 1962 and accordingly issued a Notice of Deficiency in the sum of \$1,181.22.

3. Petitioner, Howard S. Schoenberg, was a food salesman during the year 1962. He represented M.W. Houck, Inc. in the sale of food products to wholesale grocers. He did not sell products for any other company. He did not have any employees.

4. M.W. Houck, Inc. was a food broker. It represented various food product manufacturers in the sale of their products to wholesale grocers. Prior to July, 1961, petitioner, Howard S. Schoenberg, was also an independent food broker representing various food manufacturers in the same capacity. In July of 1961, he entered into an arrangement with M.W. Houck, Inc. wherein he represented it in its representation of various food product manufacturers. Thereafter, he received as commissions 40% of the commissions received on his sales by M.W. Houck, Inc. from the food product manufacturers. He was not permitted to represent any food product manufacturers for his own account. He was required to represent his former accounts through M.W. Houck, Inc. He was required to endorse over to M.W. Houck, Inc. any checks payable to him from such accounts. He received a draw against commissions of \$400.00 per week. New York State and Federal income taxes and social security tax were withheld only on the \$400.00 per week and not on the balance of the commission payments. He was a member of the company pension plan to which both he and the company contributed. He was reimbursed by M.W. Houck, Inc. for expenses incurred in entertaining food product manufacturers. He was not reimbursed for his expenses incurred in selling to the wholesale grocers. He deducted the expenses incurred in connection with these sales activities on his Federal income tax return. M.W. Houck, Inc. did not exercise any supervision or control over his sales activities or techniques or to the time he devoted to sales except to require him to submit an itinerary the week before going on the road.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Howard Schoenberg, from M.W. Houck, Inc. during the year 1962, constituted income from his regular business of selling food products to wholesale grocers and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Howard Schoenberg, during the year 1962, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Howard Schoenberg, is denied and the Notice of Deficiency issued February 28, 1966, is sustained.

DATED: Albany, New York  
*September 17, 1971*

STATE TAX COMMISSION

*Norman Gallman*  
COMMISSIONER

*Bruce Brantley*  
COMMISSIONER

*Milton Koen*  
COMMISSIONER

10/12/71

Note - A xerox copy of 9/17/71 ltr.  
as well as a xerox copy of decision was  
mailed to Mr. Schoenberg today - 1st cl.  
mail.

Cal J.

Address shown on 9/17 envelope is  
correct - Hager travels - may have  
been away.



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE  
BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

Albany, New York

September 17, 1971

Howard Schoenberg  
336 Lyncroft Road  
New Rochelle, New York

Dear Mr. Schoenberg:

Please take notice of the Decision of  
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section 722  
the Tax Law any proceeding in court to review an adverse decision  
must be commenced within 4 Months after  
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed  
in accordance with this decision or concerning any other matter relat-  
ing hereto may be addressed to the undersigned. These will be referred  
to the proper party for reply.

Very truly yours,

Paul B. Coburn  
HEARING OFFICER

cc Petitioner's Representative  
Law Bureau

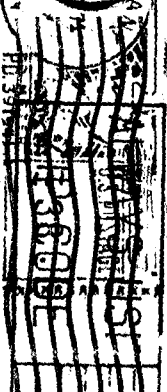
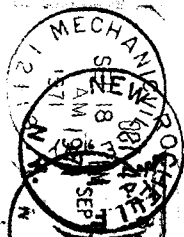
STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12226

Report  
CIGARETTE  
BOOTLEGGING  
TEL. 212 247 1617  
WHITE CANAL P.O. BOX 459  
NEW YORK, L.I. 10043

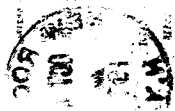
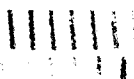


Howard Schoenberg  
336 Lyncroft Road  
New Rochelle, New York

Name \_\_\_\_\_  
1st Notice \_\_\_\_\_  
2nd Notice \_\_\_\_\_  
Return \_\_\_\_\_

**CERTIFIED**  
No. 592190

**MAIL**





STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :

of

HOWARD SCHOENBERG : DECISION

for Redetermination of Deficiency or  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law  
for the Year 1962. :

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Petitioner, Howard Schoenberg, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1962. (File No. 3-8813298). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on March 24, 1971, at 1:30 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of Counsel).

ISSUE

I. Did the selling activities of petitioner, Howard Schoenberg, during the year 1962, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Howard Schoenberg, and his wife filed a New York State income tax resident return for the year 1962. He did not file an unincorporated business tax return for said year.

2. On February 28, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Howard Schoenberg, imposing unincorporated business tax upon the income received by him from his activities as a food salesman during the year 1962 and accordingly issued a Notice of Deficiency in the sum of \$1,181.22.

In the Matter of the Petition

of

HOWARD SCHENBERG

for Reinstatement of License as  
for Return of Unpaid Taxes  
for Under Article 22 of the Tax Law  
for the Year 1931.

Petitioner, Howard Schenberg, has filed a petition for  
reinstatement of license as for return of unpaid taxes  
business tax under Article 22 of the Tax Law for the year 1931.  
File No. 3-281328. A formal hearing was held before Paul R.  
Camm, Hearing Officer, at the office of the State Tax  
Commission, 80 Centre Street, New York, New York, on March 11,  
1931, at 1:30 P.M. Petitioner appeared in person and  
was accompanied by Robert A. Felt, Esq. (Attorney at Law).

ISSUE

1. Did the selling activities of petitioner, Howard  
Schenberg, during the year 1931, constitute the carrying on  
of an unincorporated business?

FACTS IN DISPUTE

1. Petitioner, Howard Schenberg, and his wife filed a  
New York State income tax return for the year 1931.  
He did not file an unincorporated business tax return for said  
year.  
2. On February 10, 1932, the Internal Revenue Service  
Statement of Audit, dated March 1, 1932, advised petitioner  
income unincorporated business tax under the income received by  
him from his activities as a real estate agent during the year 1931.  
and accordingly issued a Notice of Deficiency in the sum of \$11,141.11.

3. Petitioner, Howard S. Schoenberg, was a food salesman during the year 1962. He represented M.W. Houck, Inc. in the sale of food products to wholesale grocers. He did not sell products for any other company. He did not have any employees.

4. M.W. Houck, Inc. was a food broker. It represented various food product manufacturers in the sale of their products to wholesale grocers. Prior to July, 1961, petitioner, Howard S. Schoenberg, was also an independent food broker representing various food manufacturers in the same capacity. In July of 1961, he entered into an arrangement with M.W. Houck, Inc. wherein he represented it in its representation of various food product manufacturers. Thereafter, he received as commissions 40% of the commissions received on his sales by M.W. Houck, Inc. from the food product manufacturers. He was not permitted to represent any food product manufacturers for his own account. He was required to represent his former accounts through M.W. Houck, Inc. He was required to endorse over to M.W. Houck, Inc. any checks payable to him from such accounts. He received a draw against commissions of \$400.00 per week. New York State and Federal income taxes and social security tax were withheld only on the \$400.00 per week and not on the balance of the commission payments. He was a member of the company pension plan to which both he and the company contributed. He was reimbursed by M.W. Houck, Inc. for expenses incurred in entertaining food product manufacturers. He was not reimbursed for his expenses incurred in selling to the wholesale grocers. He deducted the expenses incurred in connection with these sales activities on his Federal income tax return. M.W. Houck, Inc. did not exercise any supervision or control over his sales activities or techniques or to the time he devoted to sales except to require him to submit an itinerary the week before going on the road.

on Thursday the week before coming on the stand.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Howard Schoenberg, from M.W. Houck, Inc. during the year 1962, constituted income from his regular business of selling food products to wholesale grocers and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Howard Schoenberg, during the year 1962, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Howard Schoenberg, is denied and the Notice of Deficiency issued February 28, 1966, is sustained.

DATED: Albany, New York  
*September 17, 1971*

STATE TAX COMMISSION

*Norman J. Gillman*  
COMMISSIONER

*Bruce W. Wadley*  
COMMISSIONER

*Milton K. Coe*  
COMMISSIONER

the notice of delinquency issued February 19, 1936, is unavailing. G. That the petition of Edward E. Borden, et al, is denied and meaning and intent of section 136 of the Tax Law. subject to unincorporated business can be ascertained with the an unincorporated business and his income derived therefrom was E. Borden, during the year 1935, contributed and carrying on as a partnership the said business of petroleum, known as

NO. 67-14900 SAN FRANCISCO

2007-08-15 09:15:00

SECRET

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THE UNIVERSITY OF CHICAGO