

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Harold Smith

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, 1963 & 1964

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 26th day of April , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Harold Smith

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Harold Smith
41 Canal Street
New York, 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

26th day of April , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

Smith - Harold
Art. 23 - U.B.T.

In the Matter of the Petition

of

Harold Smith

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, 1963 & 1964

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

1971

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 12th day of April , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sidney Meyers,
Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sidney Meyers, Esq.
51 Chambers Street
New York, 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

12th day of April , 1971.

Joyce S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Harold Smith

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, 1963 and 1964

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 12th day of April , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Harold

Smith (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Harold Smith

550 J Grand Street
New York, New York 10002

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

12th day of April , 1971

Joseph S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
Harold Smith

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, 1963 & 1964

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 12th day of April , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Stanley Katz,

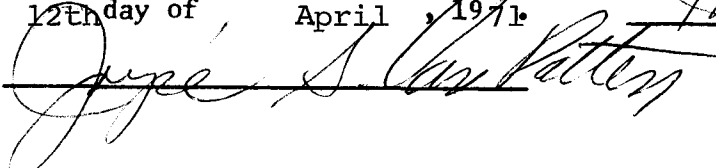

C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Stanley Katz, C.P.A.
270 Madison Avenue
New York, New York 10016

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

12th day of April , 1971.

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N.Y. 12226

1 A
Rec'd 6/1/71

Mr. Harold Smith

550 J Grand Street

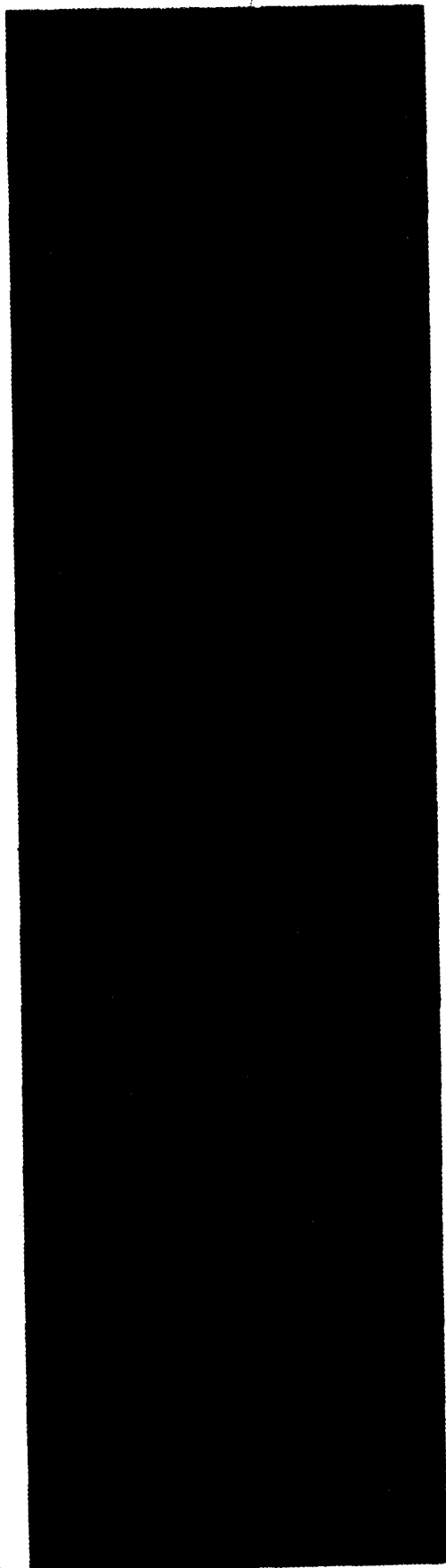
New York, New York

10002

CERTIFIED
No. 592035
MAIL

41 CANAL ST
New York, New York

ALBANY, N.Y. 12226
POSTAGE
6
RETURNED TO
SENDER
MOVED, LEFT NO ADDRESS
NEW YORK, N.Y. 10002
DO NOT USE THIS ENVELOPE
WRAPPER AGAIN.
APR 18 1971
MECHANICAL
L-118



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STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD SMITH	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1962, 1963 and 1964.	:	

Petitioner, Harold Smith, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1962, 1963 and 1964. (File No. 12629694). 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 January 19, 1971, at 1:15 P.M. Petitioner appeared by Sidney Meyers, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioner, Harold Smith, filed New York State unincorporated business tax returns for the years 1962, 1963 and 1964. He reported as net income from business the net income received from his unincorporated funeral director business, but omitted from net income from business the salary paid to him by Zion Memorial Chapel, Inc.

2. On October 17, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Harold Smith, imposing unincorporated business tax upon the salary received by him during the years 1962, 1963 and 1964, from Zion Memorial Chapel, Inc. upon the grounds that his activities as an employee and in the sole proprietorship were integrated and a mutual benefit thereby derived and accordingly issued a Notice of Deficiency in the sum of \$1,479.41.

3. During the years 1962, 1963 and 1964, petitioner, Harold Smith, was the sole proprietor of a funeral director business. His net profit from the business was \$7,837.54 in 1962, \$12,715.89 in 1963, and \$6,132.54 in 1964.

4. During the years 1962, 1963 and 1964, petitioner, Harold Smith, was also employed by Zion Memorial Chapel, Inc. as a funeral director. He received a salary from said corporation of \$11,575.00 in 1962, \$12,525.00 in 1963, and \$13,120.00 in 1964. Federal and New York State income taxes and social security tax were withheld from the salary paid to him. He reflected this income as wages on his New York State income tax returns. He was not a director, officer or stockholder of the corporation. Fifty percent of the stock in the corporation was owned by his brother who had inherited said stock from his mother. He did not have a written employment agreement with the corporation.

5. The services rendered by petitioner, Harold Smith, as a funeral director of Zion Memorial Chapel, Inc. were the same as his activities on behalf of his unincorporated business. The unincorporated business and the corporation were located at the same address. They had the same telephone numbers. The unincorporated business did not pay rent. If the deceased was a member of a fraternal or religious organization of which petitioner, Harold Smith, was a member or if the deceased's relatives requested that the funeral be directed by him, then he would direct the funeral on behalf of the unincorporated business. All other funerals would be directed by him on behalf of Zion Memorial Chapel, Inc. On several occasions, the facilities and equipment of the corporation were used by the unincorporated business in conducting the funeral. On such occasions the unincorporated business would pay the corporation for the use of such facilities. There was no specific division of his time between the corporation and the unincorporated business.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Harold Smith, during the years 1962, 1963 and 1964, as an employee of Zion Memorial Chapel, Inc. were so integrated and interrelated with his activities in connection with his unincorporated funeral director business as to constitute part of a business regularly carried on by him and, therefore, the salary received by him for services as an employee of said corporation was not 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, Harold Smith, during the years 1962, 1963 and 1964, as an employee of Zion Memorial Chapel, Inc. 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 Harold Smith is denied and the Notice of Deficiency issued October 17, 1966, is sustained.

DATED: Albany, New York

April 12, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER