

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY D. JOHNSON

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) 1965, 1966 &
1967

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 22nd day of August, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Henry D. Johnson

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Henry D. Johnson
3441-80th Street
Jackson Heights, New York 11372

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

22nd day of August, 1972

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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1967

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State of New York
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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 22nd day of August , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon William L.F. Gardiner, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: William L.F. Gardiner, Esq.
30 East 42nd Street
New York, New York 10017

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

22nd day of August , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 22, 1972

Henry D. Johnson
3441-80th Street
Jackson Heights, New York 11372

Dear Mr. Johnson:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 722 of**
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

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HENRY D. JOHNSON : DECISION
for Redetermination of Deficiency or for :
Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Years 1965, 1966 and 1967. :

Petitioner, Henry D. Johnson, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 7-78664669). 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 February 14, 1972 at 3:00 P.M. Petitioner appeared by William L. F. Gardiner, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Alexander Weiss, Esq. of Counsel).

ISSUES

I. Did petitioner, Henry D. Johnson's selling activities during the years 1965, 1966 and 1967 constitute the carrying on of an unincorporated business?

II. Are determinations by the Income Tax Bureau that petitioner, Henry D. Johnson, was not liable for unincorporated business tax for the years 1953, 1954 and 1963 res judicata to a decision by the State Tax Commission on substantially similar facts for subsequent years?

FINDINGS OF FACT

1. Petitioner, Henry D. Johnson, and his wife filed New York State combined income tax returns for the years 1965, 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On June 30, 1969 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Henry D. Johnson, imposing unincorporated business tax upon the income received by him from his activities as a book salesman during the years 1965, 1966 and 1967 and accordingly issued a Notice of Deficiency in the sum of \$3,928.91.

3. Petitioner, Henry D. Johnson, was a book salesman during the years 1965, 1966 and 1967. He represented seven unaffiliated book publishers in the sale of books to bookstores. He did not have any employees or inventory.

4. The firms for whom petitioner, Henry D. Johnson, sold books during the years 1965, 1966 and 1967 did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him. He was not covered for unemployment insurance. He did not receive vacation pay. He was not reimbursed by any of the firms for any of his expenses. He deducted expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax returns. He reported to the sales managers of each firm, who advised him as to advertising allowances, discounts and promotions. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales except to limit the territory in which he could sell.

5. Petitioner, Henry D. Johnson, carried on substantially the same type of sales activities during the years 1953, 1954 and 1963 as he did during the years 1965, 1966 and 1967. The Income Tax Bureau, after a review of information submitted by him, in 1957 cancelled unincorporated business tax assessments against him for the years 1953 and 1954 and in 1967 cancelled a similar assessment for the year 1963.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Henry D. Johnson, from the firms that he represented during the years 1965, 1966 and 1967 constituted income from his regular business of selling books and not compensation as an employee exempt from the imposition of the 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, Henry D. Johnson, during the years 1965, 1966 and 1967 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the Income Tax Bureau's determination that petitioner, Henry D. Johnson, was not liable for unincorporated business taxes for the years 1953, 1954 and 1963 is not res judicata to a decision by the State Tax Commission on substantially similar facts, that he is liable for the unincorporated business tax for the years 1965, 1966 and 1967. Sundberg v. Murphy 39 Misc. 2d 967, 242 N.Y.S. 2d 329 (Sup. Ct. Albany Co. 1963).

D. That the petition of Henry D. Johnson is denied and the Notice of Deficiency issued June 30, 1969 is sustained.

DATED: Albany, New York
August 23, 1972

STATE TAX COMMISSION

Norman J. Sullivan

COMMISSIONER

Bruce Mandley

COMMISSIONER

Milton Koen

COMMISSIONER