

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TIBOR HORVATH

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) 1957.

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

State of New York
County of Albany

LYNN WILSON

, 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 24th day of August , 1973, she served the within

Notice of Decision (or Determination) by (certified) mail upon TIBOR HORVATH

(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows:

Tibor Horvath
515 Madison Avenue
New York, N. Y. 10022

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

24th day of August , 1973.

Deputy Tax Commissioner

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

TIBOR HORVATH

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business :
Taxes under Article(s) 16-A of the
Tax Law for the (Year(s) 1957. :

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

State of New York
County of Albany

LYNN WILSON, 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 24th day of August, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon KARMAN &
BERNSTEIN, C.P.A.'S (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Karman & Bernstein, C.P.A.'s
570 - 7th Avenue
New York, N. Y. 10036

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

24th day of August, 1973

Smith & Jones

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
Mario A. Procaccino
~~NORMAN K. KOERNER~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12227
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
August 24, 1973

Tibor Horvath
515 Madison Avenue
New York, N. Y. 10022

Dear Mr. Horvath:

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

Please take further notice that pursuant to **section 386(j)** of
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **90 days** 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,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

In the Matter of the Application :
of :
TIBOR HORVATH : DETERMINATION
for Revision or Refund of Unincorporated :
Business Taxes under Article 16-A of the :
Tax Law for the Year 1957. :

The record of said hearing has been duly examined and considered.

The issue is whether the commissions received by applicant from business dealings with a Chilean company constituted the carrying on of an unincorporated business in New York subject to unincorporated business tax pursuant to section 386-a of the Tax Law.

1. Applicant, Tibor Horvath, has described his type of

business on his tax returns for 1952, 1953 and 1954 as that of "commission agent and special deals" located at 480 Lexington Avenue and later at 515 Madison Avenue, New York City. In 1955 applicant formed a partnership under the name of Horvath Trading Co. which was described as an export agency located at 515 Madison Avenue, New York City. For the year 1957, applicant filed a partnership return, IT-204, and also filed an unincorporated business tax form, IT-202, which contained solely the commission received from a company in Chile. On this form, IT-202, applicant claimed that this income was derived outside of the United States and that no unincorporated business tax was due and owing. Applicant was then assessed unincorporated business tax amounting to \$295.57 by Notice of Additional Assessment (#B-773611), dated April 19, 1960.

2. The commissions which were paid applicant and which were his main source of income for 1957, originated from an agreement entered into in 1951 between applicant and a Chilean partnership. It was agreed that the partnership of Compania Minerva Santa Barbara, a mining company, would pay a commission to applicant on all iron exports they sent to the United States in consideration of applicant introducing said partnership to a selling corporation in Chile. This agreement was contained in correspondence sent from said mining company in Chile to applicant in New York City. Applicant began to receive these commissions on a continuing basis since 1955 on his own account

and did not attribute said commissions to the partnership of Horvath Trading Co.

CONCLUSIONS OF LAW

A. Applicant, Tibor Horvath, was engaged in an unincorporated business for the year 1957 on his own account as a commission agent pursuant to section 386-a of the Tax Law. Although the commissions received by applicant were from one account, Compania Minerva Santa Barbara, they were applicant's main source of income for 1957 and were received continuously over a number of years. Such factors of continuity of payments together with the background of applicant in this type of business properly constituted the carrying on of an unincorporated business for the year 1957 (20 NYCRR §281.2).

B. The applicant, Tibor Horvath, has failed to carry his burden of proof to show that his place of transacting business with Compania Minerva Santa Barbara was outside of New York State and since all other business activities of applicant were principally located in New York City, applicant, Tibor Horvath, is found engaged in an unincorporated business of a commission agent acting on his own account and doing business wholly within New York State. The entire income (in commissions) received by applicant (from Compania Minerva Santa Barbara) is subject to unincorporated business tax pursuant to section 386-a of the Tax Law.


DETERMINATION

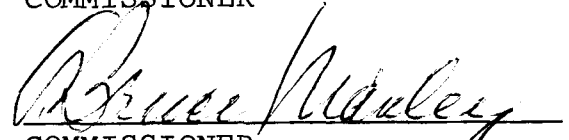
The application is denied and the Notice of Additional

Assessment (#B-773611) is affirmed together with such interest and additional charges, if any, as may be due pursuant to sections 376 and 377 of the Tax Law.

DATED: Albany, New York
August 24, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER