

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN FLAXMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (x) 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1968 and 1969.

State of New York
County of Albany

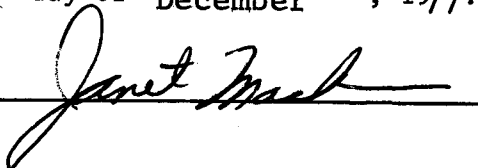
John Huhn, being duly sworn, deposes and says that
~~he~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December, 1977, ~~he~~ he served the within
Notice of Decision by (certified) mail upon John Flaxman
~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. John Flaxman
134 East 92nd Street
New York, New York 10028

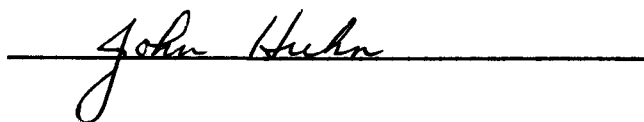
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~representative~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

13th day of December, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN FLAXMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (a) 23 of the :
Tax Law for the Year(s) ~~XXXXXX1968XXX~~ :
1968 and 1969.

State of New York
County of Albany

John Huhn, 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 13th day of December, 1977, he served the within
Notice of Decision by (certified) mail upon Sidney Edelstein

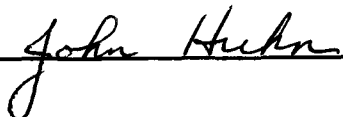
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sidney Edelstein, CPA
c/o Philip Flaxman & Co.
Hudson Trust Building
415 32nd Street
Union City, N.J. 07087
and by depositing same enclosed in a postpaid 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

13th day of December, 1977.







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

December 13, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Mr. John Flaxman
134 East 92nd Street
New York, New York 10028

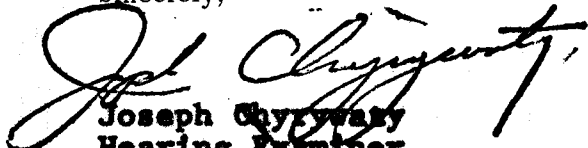
Dear Mr. Flaxman:

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 **(X) 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


Joseph Chyrvany
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JOHN FLAXMAN : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Years 1968 and 1969. :
:

Petitioner, John Flaxman, residing at 134 East 92nd Street, New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968 and 1969 (File No. 00365).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 23, 1977 at 2:45 P.M. Petitioner appeared pro se and by Sidney Edelstein, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a motion picture producer during the years 1968 and 1969 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, John Flaxman, was the producer of a motion picture which was prepared for filming during 1968 and then filmed in 1969. He was associated with Harold Prince (a well-known director) in this endeavor and together they formed a partnership called Media Productions Company. Also involved in this project were Media Productions, Inc. and Media Enterprises, Inc., corporations which were controlled by Harold Prince.

2. Petitioner contended that his activities during the years 1968 and 1969 would have been subject to unincorporated business tax except that all of his income was derived either from partnership distributions or from salaries received from a corporation for services performed as an employee.

3. In 1968, petitioner received \$4,250.00 from Media Productions Company which was a reimbursement for an agency fee paid by him. He also received \$18,700.00 from one of Harold Prince's corporations which was reported on Federal Form 1099. No deductions were made from this compensation.

4. In 1969, petitioner received \$64,600.00. Of this amount, \$22,100.00 was received from Media Productions Company and \$42,500.00 was received from Media Productions, Inc. The \$42,500.00 was compensation for services performed by petitioner for Cinema Center, Division of CBS, which was financing the motion picture. Cinema Center paid the compensation to Media Productions, Inc. rather than directly to petitioner, pursuant to the financial agreement. There were no deductions of any kind made against this compensation and

petitioner was not furnished with a withholding tax statement. Petitioner contracted as an individual to perform services for Cinema Center, Division of CBS, and not as a partnership or corporation.

5. The address of the partnership, Media Productions Company, was that of Harold Prince's business office. The partnership was used as a vehicle to compensate petitioner for his services while the motion picture project was in formation, before it was financed by Cinema Center, Division of CBS. In the years 1968 and 1969, the partnership reported no earned income and reflected only office expenses and a new-project search expense. Harold Prince had the only capital account. His capital account in the year 1968 showed a beginning balance of \$55,000.00, capital contributions of \$38,000.00, withdrawals of \$65,000.00 and an ordinary loss from operations in the amount of \$20,777.00. The loss included payment of \$4,250.00 to petitioner. In the year 1969, Harold Prince's loss amounted to \$30,247.00, \$22,100.00 of which was a payment to petitioner.

6. On his New York State personal income tax returns for the years 1968 and 1969, petitioner reported all of his income as business income from his activity as a producer. He filed a Federal Schedule "C" for said years and reported all income, deducting his entertainment and auto expenses, as well as expenses for an office which he maintained in his home. He also deducted an agency fee of \$4,250.00 which he had paid in the year 1969. Said amount constituted 10% of

the \$42,500.00 compensation paid by Cinema Center, Division of CBS, to him for his services.

7. On the advice of his accountant petitioner did not file unincorporated business tax returns for the years 1968 and 1969.

CONCLUSIONS OF LAW

A. That the making of the motion picture required the involvement of a partnership and two corporations for financial reasons and for other reasons dealing with the motion picture itself; petitioner's own income and his own deduction did not appear in the records of the partnership, nor was there an employer-employee relationship with the corporations.

B. That petitioner's income during the years 1968 and 1969 was derived from the carrying on of an unincorporated business and was, therefore, subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) of the Tax Law.

C. That petitioner's failure to file unincorporated business tax returns for the years 1968 and 1969 was due to reasonable cause and not due to willful neglect, therefore, the Income Tax Bureau is hereby directed to cancel the penalties imposed in accordance with section 685(a) for 1968 and sections 685(a)(1) and 685(a)(2) of the Tax Law for the year 1969.

D. That the petition of John Flaxman is granted only to the extent of cancelling the penalties, and that except as so granted, is in all other respects denied; that the Notice of Deficiency issued on June 26, 1972 for the years 1968 and 1969 in the amount of \$4,815.89, as modified by cancellation of the penalties, is sustained.

DATED: Albany, New York
December 13, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER