

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS J. SZUTS

For a Redetermination of a Deficiency or
a Refund of **Unincorporated Business** :
Taxes under Article ~~(8)~~ 23 of the :
Tax Law for the Year(s) 1965, 1966, :
and 1967.

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

State of New York
County of Albany

JANET MACK

, 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 July , 1975, she served the within

Notice of Decision (~~XXXXXXXXXXXX~~) by (certified) mail upon Louis J. Szuts

~~XXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

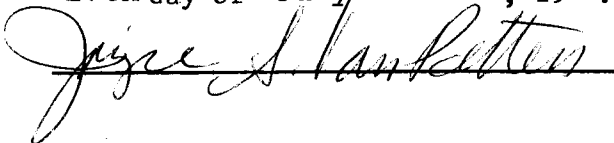
wrapper addressed as follows: Mr. Louis J. Szuts
12 Marrivale Road
Great Neck, New York

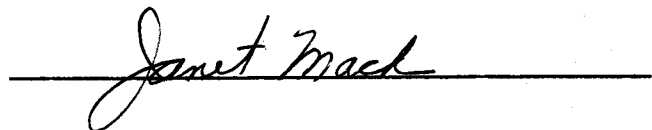
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~
~~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

17th day of July , 1975.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS J. SZUTS

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

For a Redetermination of a Deficiency or
a Refund of **Unincorporated Business:**
Taxes under Article ~~(x)~~ 23 of the
Tax Law for the Year(s) 1965, 1966, :
and 1967.

State of New York
County of Albany

JANET MACK, 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 July, 1975, she served the within
Notice of Decision (~~on Dec 17, 1975~~) by (certified) mail upon **Paul M. Bodner, CPA**

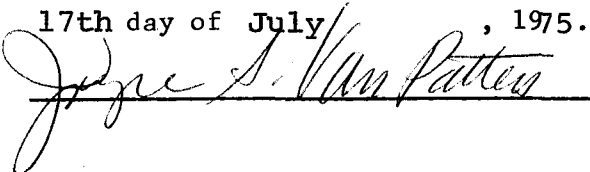
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: **Paul M. Bodner, CPA**
280 Park Avenue
New York, New York 10017

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.

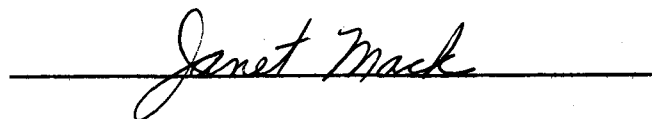
That deponent further says that the said addressee is the (representative
of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

17th day of July, 1975.



Judge S. Van Patterson



Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
James H. Tully, Jr.
~~XXXXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
July 17, 1975

Mr. Louis J. Szuts
12 Marrivale Road
Great Neck, New York

Dear Mr. Szuts:

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

Please take further notice that pursuant to
Section (S) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
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

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LOUIS J. SZUTS :
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, Louis J. Szuts, residing at 12 Merrivale Road, Great Neck, New York, 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. 74502612.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 19, 1974, at 2:40 P.M. Petitioner appeared by Paul M. Bodner, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James Scott, Esq. of counsel).

I. Did petitioner, Louis J. Szuts' activities as a food products salesman for M.H. Greenebaum, Inc. during the period from July 1, 1965 to December 31, 1967, constitute the carrying on of an unincorporated business?

II. Did petitioner, Louis J. Szuts, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1966 and 1967?

FINDINGS OF FACT

1. Petitioner, Louis J. Szuts, and his wife filed New York State income tax resident returns for the years 1966 and 1967. He did not file New York State unincorporated business tax returns for said years. He filed New York State unincorporated business tax and resident income tax returns for the year 1965.

2. On April 13, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Louis J. Szuts, imposing unincorporated business tax upon his activities as a salesman in the sum of \$2,320.56 for the year 1966 and \$2,003.36 for the year 1967. It also imposed penalties pursuant to section 685(a) of the Tax Law in the sums of \$580.14 for the year 1966 and \$500.84 for the year 1967 for failing to file unincorporated business tax returns for said years. It also increased taxable business income for the year 1965 in accordance with Federal audit changes resulting in additional unincorporated business tax due for said year in the sum of \$164.97 together with a penalty of \$8.25 pursuant to section 685(b) of the Tax Law. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$6,250.09.

3. Petitioner, Louis J. Szuts, joined the firm of M.H. Greenebaum, Inc. as a food products salesman in 1958. In January, 1965, he was vice-president of the Classique Foods Division of said corporation. His duties consisted of selling the division's products. He was paid on a commission basis. Prior to July 1, 1965, Federal and New York State income taxes and social security tax was withheld from his commission income. He was covered for workmen's compensation

and other types of social insurance. He did not sell the products of any other firm. His sole loyalty in the performance of his services was to the company. He was subject to substantial supervision and control by the company.

4. In early 1965 a company known as John Morrel & Co. entered into negotiations to purchase M.H. Greenebaum, Inc. Petitioner, Louis J. Szuts, was advised that John Morrel did not want him as an employee because he would have to be included in their pension plan. He was advised that he was to be terminated as an employee, but that he could continue his relationship with the company as an independent broker.

5. On July 1, 1965, applicant, Louis J. Szuts, entered into a written agreement with M.H. Greenebaum, Inc. It provided that as of July 1, 1965 he was to represent the corporation as an "independent broker" compensated on a commission basis. He was not to be compensated for any expenses incurred. Paragraph 5 of the agreement provided:

"You recognize and affirm that you are an independent contractor, and that nothing herein contained shall be deemed to constitute you an agent, partner or employee of this Company (including any subsidiary or affiliate of this Company), nor this Company (including any subsidiary or affiliate of this Company) of you or them, nor shall you or this Company have authority to bind each other in any way with respect to anything whatsoever. You shall be solely and exclusively liable for wages, commissions, Workmen's Compensation, and insurance, payroll and all other taxes relating to yourself or anyone employed by you."

The agreement further provided that he was not permitted to represent any other principal and that it could be terminated by

either party on thirty-days notice. This agreement was in force during the period from July 1, 1965 through December 31, 1967.

6. During the period from July 1, 1965 through December 31, 1967, petitioner, Louis J. Szuts' activities as a food products salesman for M.H. Greenebaum, Inc. were substantially the same as during the period from January 1, 1965 to June 30, 1965.

7. Petitioner, Louis J. Szuts, was advised by his accountants that he was not required to file New York State unincorporated business tax returns for the years 1966 and 1967.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Louis J. Szuts, from M.H. Greenebaum, Inc. during the period from July 1, 1965 to December 31, 1967, constituted income from his regular business of selling food products 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, Louis J. Szuts, during the period from July 1, 1965 to December 31, 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.

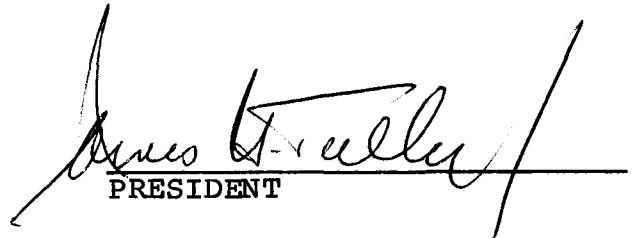
C. That petitioner, Louis J. Szuts, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1966 and 1967, and, therefore, the penalties assessed pursuant to section 685(a) of the Tax Law for said years are waived.

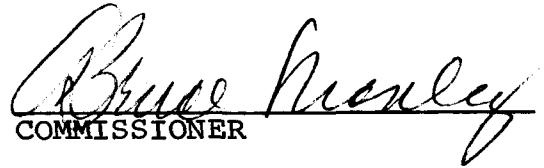
D. That the petition of Louis J. Szuts is granted to the extent of cancelling the penalties imposed pursuant to section 685(a) of the Tax Law for the years 1966 and 1967 in the total sum of \$1,080.98; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued April 13, 1970; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

July 17, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER