

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
EDWARD MAHER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business Tax :  
Taxes under Article (a) 23 of the :  
Tax Law for the Year(s) or Period(s) 1968, :  
1969 and 1970.

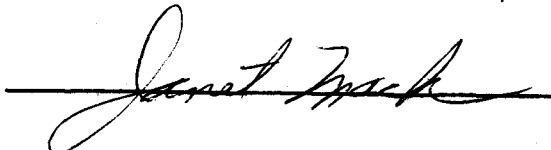
State of New York  
County of Albany

MARYLOU SAMUELS, 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 29th day of November, 1976, she served the within  
Notice of Decision by (certified) mail upon Edward Maher  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Edward Maher  
12 Derby Road  
Port Washington, New York 11050  
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

29th day of November, 1976.







STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

November 29, 1976

TELEPHONE: (518) **457-3850**

Mr. Edward Maher  
12 Derby Road  
Port Washington, New York 11050

Dear Mr. Maher:

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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

Enc.

Paul B. Coburn  
Supervising Tax

cc: ~~Petitioner's Representative~~: Hearing Officer

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
EDWARD MAHER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1968,	:	
1969 and 1970.	:	

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Petitioner, Edward Maher of 12 Derby Road, Port Washington, New York 11050, has 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, 1969 and 1970. (File No. 00595). A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 11, 1976 at 10:30 a.m. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of Counsel).

#### ISSUE

Whether the business activities of petitioner, Edward Maher, constituted the carrying on of an unincorporated business as a public relations consultant or whether he was a contract employee of the Business-Industry Political Action Committee.

#### FINDINGS OF FACT

1. Petitioner, Edward Maher, and his wife, Catherine, filed New York State combined income tax resident returns for 1968, 1969

and 1970. He did not file unincorporated business tax returns for these years.

2. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Edward Maher, imposing unincorporated business taxes as follows:

<u>1968</u>	<u>1969</u>	<u>1970</u>	
\$667.96	\$750.88	\$673.07	\$2,091.91
		Interest:	<u>500.91</u>
		TOTAL:	<u>\$2,592.82</u>

A Notice of Deficiency was issued on September 17, 1975 after an informal conference between the petitioner, Edward Maher, and the Review Unit of the Income Tax Bureau. That Notice of Deficiency revised the Statement of Audit Changes to detail the deficiency as:

<u>1968</u>	<u>1969</u>	<u>1970</u>	<u>Total</u>
\$595.36	\$666.16	\$673.07	\$1,934.59

The Statement did not show any interest due to the date of the Notice.

On October 8, 1975, petitioner, Edward Maher, remitted a check in the amount of \$2,050.67 to the Income Tax Bureau.

3. On May 24, 1974, petitioner, Edward Maher, filed a petition for redetermination of the unincorporated business taxes alleged to be due for the years 1968, 1969 and 1970. After conferring with the Review Unit of the Income Tax Bureau, on

September 22, 1975, petitioner, Edward Maher, wrote to the Chief of the Review Unit:

"Inasmuch as I have no further evidence or arguments to add to those already reviewed by your Unit, I do not think there is much point in requesting another formal hearing concerning the above . . . Therefore, I am prepared to withdraw my petition. However, I cannot sign the discontinuance notice you sent me, my copy returned herewith, because the figures in the little box have not been changed to conform to the recomputed liability presented in your letter of September 17. Furthermore, the assessing of "interest to date", mentioned in the withdrawal notice, seems completely unfair."

4. The petition of Edward Maher dated May 24, 1974 states in paragraph 2 that he was hired in October, 1964 pursuant to a letter of agreement which defined his duties as follows:

"Your responsibilities will be to consult with, advise and assist the Executive Director (underlining petitioner's) in connection with the organization and development of plans and material for the administration, growth and expansion of the Division of Political Education of BIPAC . . . ."

5. Petitioner has stated and re-iterated that his business activities in 1968 and 1969 and 1970 differed in no whit from what he had done in 1967 and prior thereto.

6. Petitioner, Edward Maher, had written for the publications of the Business-Industry Political Action Committee, edited and helped produce its publications and other writings, developed and interpreted political statistics, as well as performed such other tasks as might be assigned to him.

7. Petitioner, Edward Maher, listed his occupation as "writer" on the Schedule C attached to the federal income tax return form 1040 for each of the years 1968, 1969 and 1970. Income taxes were not withheld from his remuneration. He filed and paid estimated income taxes and social security taxes as a self-employed person.

8. The business activities of the petitioner, Edward Maher, had been the subject of a formal hearing and a Tax Commission decision as to whether 1967 income was subject to unincorporated business tax. That decision under File No. 7-7863018, dated August 28, 1973 held that the activities of the petitioner, Edward Maher, constituted the carrying on of an unincorporated business.

#### CONCLUSIONS OF LAW

A. That the petitioner admittedly engaged in the same business activities in 1968, 1969 and 1970 as he had in the year 1967 which was the subject of the Tax Commission decision of August 28, 1973 makes that decision applicable as well as to the instant petition. That the petitioner, Edward Maher, was engaged

during 1968, 1969 and 1970 in conducting an unincorporated business subject to the business tax under Section 703 of the Tax Law.

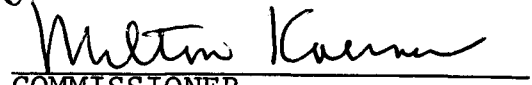
B. That the petitioner, Edward Maher, failed to sustain the burden of proof of showing that the alleged employer exercised such a degree of direction and control over the petitioner as to demonstrate that said petitioner was a mere employee.

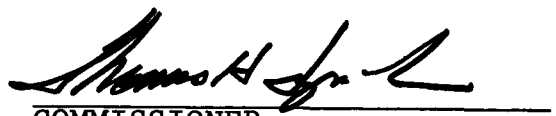
C. That the petition of Edward Maher is denied and the Notice of Deficiency issued September 17, 1965, as it relates to unincorporated business tax liability, and giving due credit for payments already made, is sustained.

DATED: Albany, New York  
November 29, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER