

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MAE SCHWARTZ

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) ~~or Period(s)~~ :  
1967, 1968 and 1969.

State of New York  
County of Albany

Catherine Steele, 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 4th day of October, 1976, she served the within Notice of Decision by (certified) mail upon Mae Schwartz ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mrs. Mae Schwartz  
50 West 72nd Street  
New York, New York 10023  
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

4th day of October, 1976.

Catherine Steele

Ernest Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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AFFIDAVIT OF MAILING

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1967, 1968 and 1969.

State of New York  
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 4th day of October, 1976, she served the within  
Notice of Decision by (certified) mail upon Albert M. Goldstein, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

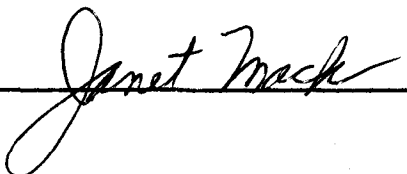
as follows: Albert M. Goldstein, CPA  
Albert B. Lewis and Company  
Four East 43rd Street  
New York, New York 10017

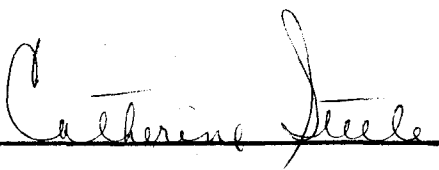
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That deponent further says that the said addressee is the (representative  
of the) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (representative of the) petitioner.

Sworn to before me this

4th day of October, 1976

  
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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

October 4, 1976

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

Mr. Mae Schwartz  
50 West 72nd Street  
New York, New York 10023

Dear Mrs. Schwartz:

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

Please take further notice that pursuant to  
Section ~~65~~ **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,  
*Frank J. Puccia*

**Frank J. Puccia**  
**Supervisor of Small**  
**Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
MAE SCHWARTZ : DECISION  
for a Redetermination of a Deficiency or for :  
Refund of Unincorporated Business Taxes under :  
Article 23 of the Tax Law for the Years 1967, :  
1968 and 1969.

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Petitioner, Mae Schwartz, 50 West 72nd Street, New York, New York 10023, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1967, 1968 and 1969. (File #9-34577862). A small claims hearing was held before Joseph Marcus, Small Claims Hearing Officer at the offices of the State Tax Commission, Two World Trade Center, New York, New York on July 12, 1976, at 2:45 P.M. Petitioner appeared by Albert M. Goldstein, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUES

I. Did petitioner, Mae Schwartz's activities as a mutual fund sales person during the years 1967, 1968 and 1969, constitute the carrying on of an unincorporated business?

II. Did petitioner, Mae Schwartz, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1967, 1968 and 1969?

FINDINGS OF FACT

1. Petitioner, Mae Schwartz, filed New York State income tax returns for the years 1967, 1968 and 1969. She did not file New York State unincorporated business tax returns for said years.

2. On November 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes (originally dated June 19, 1973) against the petitioner, Mae Schwartz, imposing unincorporated business tax upon the income received by her from her activities as a mutual fund sales person during the years 1967, 1968 and 1969. It also imposed a penalty for failure to file a New York State unincorporated business tax return for the said years in the sum of \$298.37. It also imposed a personal income tax of \$33.96 which was based on an adjustment determined by a Federal audit for the year 1969. The personal income tax is not contested and is not an issue in the instant hearing. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$1,446.48.

3. Petitioner, Mae Schwartz, was a mutual fund sales person selling mutual funds for Investors Planning Corporation which later became Equity Funding Corporation, during the years 1967, 1968 and 1969. She did not have any employees. She used its office and telephone.

4. Investors Planning Corporation and Equity Funding Corporation did not withhold income taxes or social security taxes on the commission income earned by petitioner on her own sales. Social security and income taxes were withheld on what petitioner called "over-rides," a remuneration based on earnings generated by other salespeople in which petitioner had an interest.

5. Petitioner was not reimbursed for any of her expenses. She deducted these expenses on Schedule "C" of her Federal income tax returns. She was not covered for unemployment insurance. Investors Planning Corporation did not exercise any substantial supervision or control over her sales activities and techniques or over the time she devoted to her sales.

6. Petitioner obtained business cards on which her home address and phone number were printed.

7. Petitioner did not have specified hours of work and was not subject to strict sales quotas.

CONCLUSIONS OF LAW

A. That the income of petitioner, Mae Schwartz, as a mutual fund sales person during the years 1967, 1968 and 1969, did constitute income from her regular business as a mutual fund sales person and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of the petitioner, Mae Schwartz, constituted the carrying on of an unincorporated business and her 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 petitioner, Mae Schwartz, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1967, 1968 and 1969 and therefore, the penalties assessed pursuant to section 685(a) of the Tax Law are waived.

D. That the petition of Mae Schwartz is granted to the extent of cancelling penalties imposed pursuant to section 685(a) of the Tax Law in the sum of \$298.37 for the years 1967, 1968 and 1969 and the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency dated November 26, 1973 and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
October 4, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER