

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WARREN VENOKUR

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(s) 23 of the  
Tax Law for the Year(s) 1966 & 1967.:

State of New York  
County of Albany

Margaret A. Groelz, 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 April, 1976, she served the within  
Notice of Decision (~~or Determination~~) by (certified) mail upon Warren Venokur

(~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Warren Venokur  
80-18 252nd Street  
Bellerose, 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~~  
&F) 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 April, 1976

Margaret A. Groelz

Janet Mach

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

WARREN VENOKUR

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(s) 23 of the  
Tax Law for the Year(s) 1966 & 1967 :

State of New York  
County of Albany

Margaret A Groelz , 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 April , 1976, she served the within  
Notice of Decision (~~xxxRedetermination~~) by (certified) mail upon Edward M.

Fels, C.P.A. (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Edward M. Fels, CPA.  
76 South Central Avenue  
Valley Stream, New York 11580

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

29th day of April , 1976

Janet Mack

Margaret A Groelz



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT  
MR. COBURN  
MR. LEISNER

(518) 457-3850

DATED: Albany, New York  
April 29, 1976

Mr. Warren Venokur  
80-18 252nd Street  
Bellerose, New York

Dear Mr. Venokur:

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  
Supervising Tax  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WARREN VENOKUR	:	DECISION
	:	
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1966 and 1967	:	

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Petitioner, Warren Venokur, residing at 80-18 252nd Street, Bellerose, 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 1966 and 1967. (File No. 74412495). A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, N.Y. on December 20, 1974, at 10:00 A.M. Petitioner appeared by Edward M. Fels, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq. (James Scott, Esq., of Counsel).

#### ISSUES

I. Did petitioner, Warren Venokur's selling activities during the years 1966 and 1967 constitute the carrying on of an unincorporated business?

II. Did petitioner, Warren Venokur, have reasonable cause for failing to file unincorporated business tax returns for the years 1966 and 1967?

FINDINGS OF FACT

1. Petitioner, Warren Venokur, 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.

2. On November 30, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Warren Venokur, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1966 and 1967. It also imposed a penalty of \$76.47 for failure to file unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$435.65.

3. During the year 1966 petitioner, Warren Venokur, was a salesman for the following six unaffiliated auto parts manufacturers: Devon Tape, Valley Forge, Auto Lux, B&G Clutch, King Brake and Prince McIlwaine. During the year 1967 petitioner was a salesman for the following six unaffiliated auto parts

manufacturers: the first four mentioned above plus Rimac and Seymour Paint Corp.

4. During the years 1966 and 1967 the firms for whom petitioner, Warren Venokur, sold auto parts did not withhold Federal or New York State income taxes from the commissions paid him. He was not reimbursed for any of his business expenses. He deducted these business expenses on Schedule "C" of his Federal income tax return. He maintained an office at home where he kept files, records and had the use of a telephone. The firms for whom he sold merchandise did not exercise any supervision or control over his sales activities or techniques or to the time he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, Warren Venokur, in prior years had filed unincorporated business tax returns but was advised by his accountant that he was not required to file such returns for the years 1966 and 1967.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Warren Venokur, from the firms he represented during the years 1966 and 1967 constituted income from his regular business of selling auto parts 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.

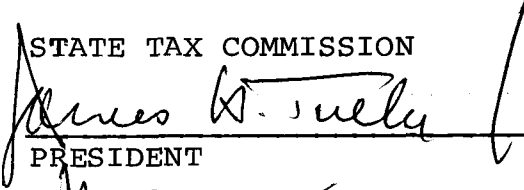
B. That the aforesaid activities of petitioner, Warren Venokur, during the years 1966 and 1967 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, Warren Venokur, had reasonable cause for not filing unincorporated business tax returns for the years 1966 and 1967, and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of Warren Venokur is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1966 and 1967 and the Notice of Deficiency issued November 30, 1970, is reduced from \$435.65 to \$359.18, together with such interest as may be lawfully owing; that the Income Tax Bureau is hereby directed to accordingly modify said Notice of Deficiency; and, that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
April 29, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER