

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANGEL BARNES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1971 and 1972

State of New York  
County of Albany

John Huhn , 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 25 day of November , 1977 , she served the within

Notice of Decision by (certified) mail upon Angel Barnes

(~~representative of~~) the petitioner in the within proceeding,

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

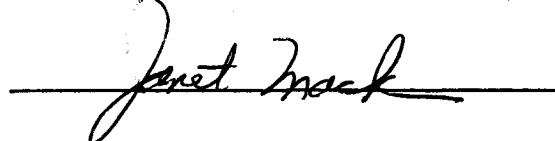
Angel Barnes  
327 Beach 143rd St.  
Neponsit, New York 11694

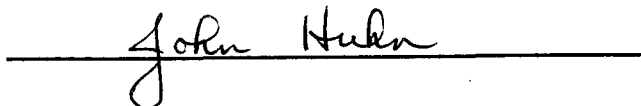
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

25th day of November , 1977.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANGEL BARNES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (9) 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1971 and 1972

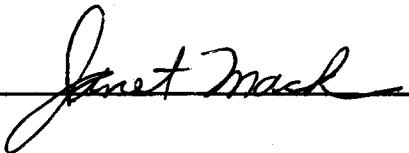
State of New York  
County of Albany

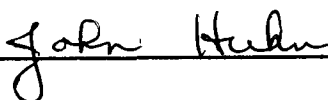
John Huhn , being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 25th day of November , 1977 , she served the within  
Notice of Decision by (certified) mail upon Seymour L. Goldstein, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Seymour L. Goldstein, CPA  
26 Court St., (Rm 510)  
Brooklyn, New York 11242  
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

25th day of November , 1977.







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

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

November 25, 1977

Angel Barnes  
327 Beach 143rd St.  
Hempstead, New York 11694

Dear Ms. Barnes:

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(s) ~~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 C. Chapparo  
Hearing Examiner

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	:	
ANGEL BARNES	:	
for Redetermination of a Deficiency or	:	DECISION
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1971 and 1972.	:	

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Petitioner, Angel Barnes, residing at 327 Beach 143rd Street, Neponsit, New York 11694, 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 1971 and 1972 (File No. 13068).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1976 at 9:15 A.M. The petitioner appeared by Seymour L. Goldstein, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the income received by petitioner during the years 1971 and 1972 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner and his wife filed New York State personal income tax returns for the years 1971 and 1972. Petitioner did not file New York State unincorporated business tax returns for said years.

2. During the years 1971 and 1972, petitioners earned income as follows:

<u>Principals</u>	<u>1971</u>	<u>1972</u>
Mary E. Rosencrans	\$5,000.00	\$5,000.00
Irving I. Baum Co., Inc.	4,000.00	-
Harry S. Davidson, Inc.	1,000.00	-
Saul Heller, Inc.	1,000.00	-
LeSart Holding Corp.	-	3,500.00
Irvin Life Agency, Inc.	-	500.00
Parson Development Corp.	-	1,500.00
148 Montague Corp.	-	500.00
Frederic B. Thomason, Inc.	<u>12,325.00</u>	<u>3,200.00</u>
Total	\$23,325.00	\$14,200.00

3. On June 24, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner for the years 1971 and 1972 in the sum of \$1,231.14, upon the grounds that the income he received during said years was subject to unincorporated business tax.

4. During the years 1971 and 1972, petitioner was sole stockholder and president of Frederic B. Thomason, Inc. In addition, during the year 1971, petitioner was sole stockholder and president of Irving I. Baum Co., Inc., Harry S. Davidson, Inc. and Saul Heller, Inc.

5. Petitioner's activities in connection with Frederic B. Thomason, Inc. consisted of administrative duties and the sale of insurance to corporations. The other principals from whom petitioner received income were engaged in the real estate and insurance business.

6. Petitioner maintained that he was an employee of the corporations of which he was sole stockholder and president. He conceded that his activities for all other principals constituted the carrying on of an unincorporated business.

CONCLUSIONS OF LAW

A. That petitioner's activities in connection with the income he received from Mary E. Rosencrans during the year 1971 and 1972 and from Lesart Holding Corp., Irvin Life Agency, Inc., Parson Development Corp. and 148 Montague Corp. during the year 1972, constituted services rendered as an independent contractor and not as an employee.

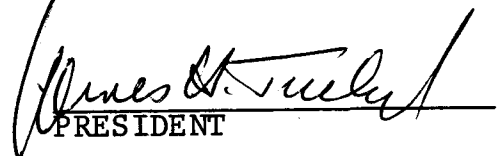
B. That the activities of petitioner performed as an independent contractor during the years 1971 and 1972 on behalf of the principals listed in Conclusion of Law "A", above, constituted the carrying on of an unincorporated business, and that the income derived therefrom was subject to unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the income received by petitioner from Frederic B. Thomason, Inc., Irving I. Baum Co., Inc., Harry S. Davidson, Inc. and Saul Heller, Inc. was earned from services rendered as an employee, and that as such, said income is not subject to unincorporated business tax.

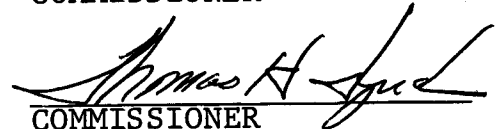
D. That the petition of Angel Barnes is granted with respect to income earned by him as an employee, and that except as so granted, is in all other respects denied.

DATED: Albany, New York  
November 25, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER