

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD BERKOFF

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 ~~(x)~~ ~~1968~~ ~~(x)~~ 1968:

State of New York
County of Albany

Marsina Donnini, 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 24th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Bernard Berkoff

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

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

Mr. Bernard Berkoff
2000 Linwood Avenue
Fort Lee, New Jersey 07204

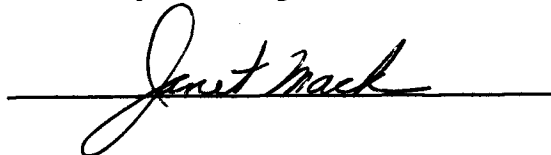
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

24th day of August, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD BERKOFF

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 ~~(x) or (x)~~ 1968.:
~~(x) or (x)~~

State of New York
County of Albany

Marsina Donnini, 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 24th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon Bernard Klatzko

(representative of) the petitioner in the within proceeding,

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

as follows: Bernard Klatzko, CPA
Clarence Rainess & Co.
One Astor Plaza, 1515 Broadway
New York, New York 10036

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

24th day of August, 1977.

Marsina Donnini

Janet Mack



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

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

August 24, 1977

**Mr. Bernard Berkoff
2000 Linwood Avenue
Fort Lee, New Jersey 07204**

Dear Mr. Berkoff:

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 **(a) 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 Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
BERNARD BERKOFF	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1968.	:	

Petitioner, Bernard Berkoff, residing at 2000 Linwood Avenue, Fort Lee, New Jersey 07204, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1968. (File No. 13076).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on February 2, 1977 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Bernard Klatzko, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

ISSUES

I. Whether the salary income received by the petitioner, Bernard Berkoff, during the year 1968 is so integrated and

interrelated with his business activities it constitutes additional unincorporated business income.

II. Whether petitioner, Bernard Berkoff, had reasonable cause for failing to file a New York State unincorporated business tax return for the year 1968.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. From January 1, 1968 to September 27, 1968, petitioner was a sales representative for several firms and the income derived from this activity was admittedly subject to the unincorporated business tax.

2. On September 27, 1968, petitioner terminated all of his unincorporated business activities to become an officer and stockholder of a corporation. He was named president and his duties included administration of said corporation. Petitioner was paid a salary in the amount of \$4,650.00 for the balance of the year 1968 by the corporation.

3. Petitioner was advised by his accountant that he was not required to file a New York State unincorporated business tax return for the year 1968.

4. That the services rendered by petitioner during the year 1968 in connection with his salary income from the corporation was not so integrated and interrelated with his activities as a sales representative as to constitute a part of his selling

business carried on by him and therefore the salary received by him from said corporation, is not subject to the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

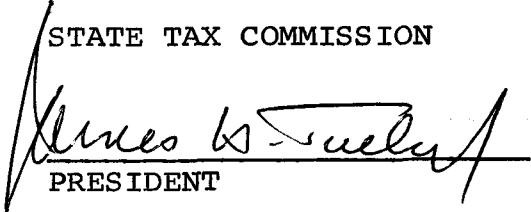
5. That the petitioner, Bernard Berkoff, had reasonable cause for not filing a New York State unincorporated business tax return for the year 1968.

6. That the petition of Bernard Berkoff is granted to the extent that the salary income of \$4,650.00 received from the corporation, is not includable for unincorporated business tax purposes and to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the year 1968.

7. The Income Tax Bureau is hereby directed to modify the Notice of Deficiency in the sum of \$714.38 issued June 26, 1972 and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
August 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER