

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAUL BOYERS and JOELLE BOYERS

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 ~~(or Period)~~ 1968. :

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of September, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Saul & Joelle Boyers

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

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

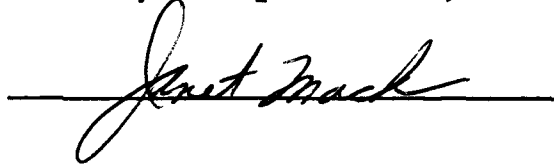
as follows: Mr. & Mrs. Saul Boyers
2 Bouton Place
Huntington, New York 11743

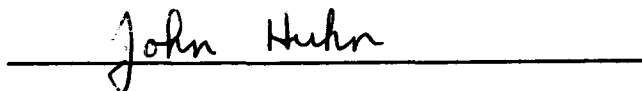
and by depositing same enclosed in a postpaid, properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

1st day of September, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAUL BOYERS and JOELLE BOYERS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(*)~~ 23 of the :
Tax Law for the Year ~~(*)~~ ~~1968~~ ~~(*)~~ 1968. :

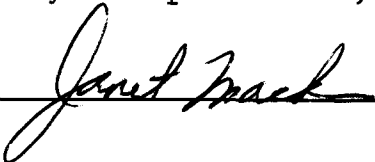
State of New York
County of Albany

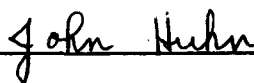
John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 1st day of September, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Allen Alster
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Allen Alster, Esq.
1920 New York Avenue
Huntington Station, New York 11746
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

1st day of September, 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

September 1, 1977

**Mr. & Mrs. Saul Boyers
2 Bouton Place
Huntington, New York 11743**

Dear Mr. & Mrs. Boyers:

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 **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,

**John J. Sollecito
Director
Tax Appeals Bureau**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
SAUL BOYERS and JOELLE BOYERS	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Year 1968.	:	

Petitioners, Saul Boyers and Joelle Boyers, 2 Bouton Place, Huntington, New York 11743, filed petitions for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1968. (File No. 00340).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 7, 1976 at 1:30 P.M. The petitioners appeared by Allen Alster, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioners, Saul Boyers and Joelle Boyers, were engaged in an unincorporated business during the year 1968.

FINDINGS OF FACT

1. Petitioners, Saul Boyers and Joelle Boyers, filed a New York State resident income tax return for the year 1968. They listed \$100,956.81 as total wages for the year, \$31,718.81 of which was allocated to Saul Boyers and \$69,238.00 to Joelle Boyers. They did not file an unincorporated business tax return for 1968.

2. On March 20, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Saul Boyers, imposing unincorporated business tax for the year 1968, consisting of a deficiency of \$895.36, plus \$157.42 in interest, upon the grounds that he was engaged in an unincorporated business. Accordingly, a Notice of Deficiency was issued totaling \$1,052.78.

3. On March 20, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Joelle Boyers, imposing unincorporated business tax for the year 1968, consisting of a deficiency of \$3,258.09, plus \$572.84 in interest, upon the grounds that she was engaged in an unincorporated business. Accordingly, a Notice of Deficiency was issued totaling \$3,830.93.

4. Petitioner, Saul Boyers, was employed by W. B. Saunders Company of Philadelphia, Pennsylvania, as a medical book salesman and regional sales manager in the year 1968. He represented no other entity and was paid by commissions only. He maintained an office in his home, and was not reimbursed for any of the expenses he incurred in the performance of his duties. The letterheads he used displayed his claimed employer's name. He reported regularly to the main office by phone and appeared there about once

a month. Although he was not given specific accounts to sell, he was limited in the territory he could cover. His claimed employer deducted social security and withheld taxes from him. He was also a member of the company's pension plan.

5. The \$31,718.81 stated in Finding of Fact "1" was attributable to commissions on medical book sales, and the \$69,238.00 mentioned in the same Finding of Fact was attributable to a stock option exercised in W. B. Saunders Company, by petitioner, Saul Boyers, with his and Joelle Boyers' money.

CONCLUSIONS OF LAW

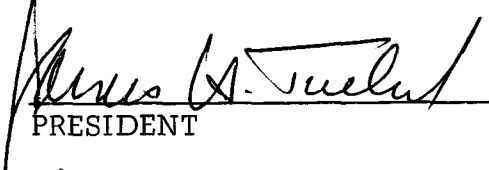
A. That, since W. B. Saunders Company required the sole loyalty of petitioner, Saul Boyers, and exercised the degree of direction and control requisite to find an employer-employee relationship between the two parties, therefore, the services of Saul Boyers did not constitute the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law for the year 1968.

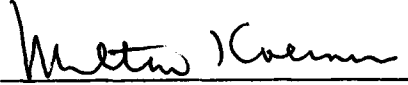
B. That, since the \$69,238.00 attributed to petitioner, Joelle Boyers, on the joint income tax return of Saul Boyers and Joelle Boyers was from the exercise of a stock option granted to Saul Boyers by his employer, therefore, it was not income from an unincorporated business within the meaning and intent of section 703 of the Tax Law for the year 1968.

C. That the petitions of Saul Boyers and Joelle Boyers are granted
and the notices of deficiency issued March 20, 1972 are cancelled.

DATED: Albany, New York
September 1, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER