

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY E. BRENDDEL, JR.

For a Redetermination of a Deficiency or  
~~Revision of a Redetermination of a~~ Refund  
of Unincorporated Business  
Taxes under Article (x) 23 of the  
Tax Law for the Year(s) or Period(s) 1969  
~~and 1970.~~

AFFIDAVIT OF MAILING

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 29th day of September, 19 77, she served the within  
Notice of Decision by (certified) mail upon Anthony E. Brendel, Jr.

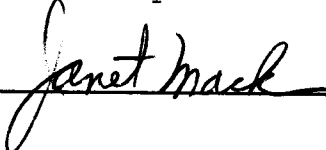
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Anthony E. Brendel, Jr.  
One Harbor Road  
Darien, Connecticut 06820

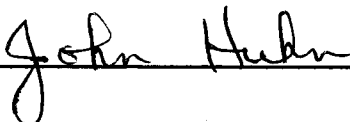
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

29th day of September, 19 77.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY E. BRENDDEL, JR.

For a Redetermination of a Deficiency or  
~~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) 1969  
and 1970

AFFIDAVIT OF MAILING

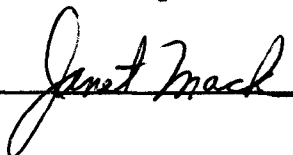
State of New York  
County of Albany


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 29th day of September, 1977, she served the within  
Notice of Decision by (certified) mail upon Albert Shlom and  
Robert Littman, Esqs. (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Albert Shlom and Robert Littman, Esqs.  
Shlom & Littman  
370 Lexington Avenue  
New York, New York 10017  
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

29th day of September, 1977

  
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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 29, 1977**

**Mr. Anthony E. Brendel, Jr.**  
**One Harbor Road**  
**Darien, Connecticut 06820**

**Dear Mr. Brendel:**

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,

*Joseph Chyrywaty/mey*  
**Joseph Chyrywaty**  
**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	:	
	:	
ANTHONY E. BRENDDEL, JR.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1969 and 1970.	:	

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Petitioner, Anthony E. Brendel, Jr., residing at One Harbor Road, Darien, Connecticut 06820, 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 years 1969 and 1970. (File No. 00554.)

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on April 29, 1977 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Albert Shlom and Robert Littman, Esqs. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the income received by petitioner during the years 1969 and 1970 was subject to unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner and his wife filed New York State income tax resident returns for the years 1969 and 1970. Petitioner did not file New York State unincorporated business tax returns for said years.

2. On December 23, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner in the sum of \$3,619.66, imposing unincorporated business tax upon the income he received during the years 1969 and 1970.

3. During the years 1969 and 1970, petitioner received income in the amounts of \$27,500.00 and \$47,500.00, respectively, from Anson Associates, Inc. In addition, he received a small amount of insurance renewal fees from two firms for past services and income from the rental of his garage.

4. During the years 1969 and 1970, petitioner was the sole shareholder and vice-president of Anson Associates, Inc. Other than petitioner, said corporation did not engage any personnel.

5. During the years 1969 and 1970, petitioner received income in the sum of \$2,492.00 and \$389.00, respectively, which represented insurance renewal fees derived from services rendered prior to the year 1969.

6. During the years 1969 and 1970, petitioner received income in the sum of \$240.00 and \$220.00, respectively, from the rental of his garage.

7. That petitioner was an employee of Anson Associates, Inc. and as such the income he received from the corporation during the years 1969 and 1970 was not subject to unincorporated business tax pursuant to section 703(b) of the Tax Law.

8. That petitioner did not present evidence to indicate that the income he received as renewal fees was earned from past services as an employee and therefore it is deemed that such income was earned as an independent contractor.

9. That the income petitioner received as renewal fees constituted income received from a business regularly carried on by him and as such is subject to unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

10. That the income petitioner received from the rental of his garage is not subject to unincorporated business tax pursuant to section 703(e) of the Tax Law.

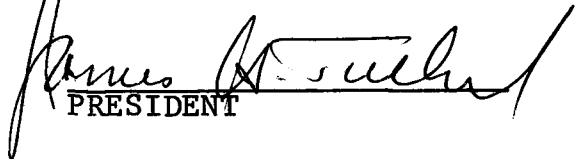
11. That the total income petitioner received during the years 1969 and 1970 which constituted income derived from an unincorporated business, although subject to unincorporated business tax, will not result in a tax liability.

12. That, the petition of Anthony E. Brendel, Jr. is granted and the Notice of Deficiency issued on December 23, 1974 is cancelled.

DATED: Albany, New York

September 29, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER