

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THE ESTATE OF DAVID COHEN

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(s) ~~X or Period(s)~~ :  
1969 and 1972

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 December, 1977, He served the within

Notice of Decision by (certified) mail upon The Estate of David Cohen

Sylvia Cohen, Executrix ~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: The Estate of David Cohen

Sylvia Cohen, Executrix

161-06 Jewel Avenue

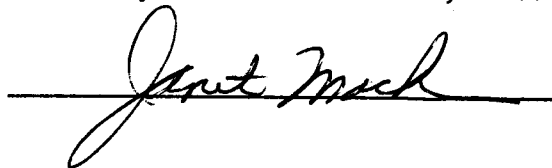
Flushing, New York 11365

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~~ 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 December, 1977.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
THE ESTATE OF DAVID COHEN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(30)~~ 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1969 and 1972


State of New York  
County of Albany

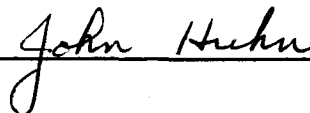
John Huhn, being duly sworn, deposes and says that  
~~she~~ she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 1st day of December, 1977, ~~she~~ she served the within  
Notice of Decision by (certified) mail upon Michael Russell, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Michael Russell, CPA  
6 Vista Lane  
Edgewater, New Jersey 07020  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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last known address of the (representative of the) petitioner.

Sworn to before me this

1st day of December, 1977.

  
\_\_\_\_\_

  
\_\_\_\_\_



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

December 1, 1977

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

The Estate of David Cohen  
Sylvia Cohen, Executrix  
161-06 Jewel Avenue  
Flushing, New York 11365

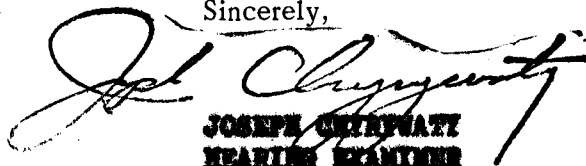
Dear Ms. Cohen:

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 **(X) 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. MURPHY**  
**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	:	
THE ESTATE OF DAVID COHEN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1969 and 1972.	:	

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Petitioner, the Estate of David Cohen (Sylvia Cohen, Executrix), residing at 161-06 Jewel Avenue, Flushing, New York 11365, 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 1969 and 1972 (File No. 11966).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1976 at 1:15 P.M. The petitioner appeared by Michael Russell, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul Rosenkrantz, Esq., of counsel).

#### ISSUES

I. Whether the income derived from David Cohen's activities as a salesman was subject to unincorporated business tax.

II. Whether selling and other services rendered by Sylvia Cohen to David Cohen, in connection with his selling activities during the years 1969 and 1972, constituted services as an employee for which a salary deduction should have been allowed for unincorporated business tax purposes.

FINDINGS OF FACT

1. The Income Tax Bureau issued separate notices of deficiency against David Cohen and the Estate of David Cohen (both hereinafter referred to as "petitioner") for the years 1969 and 1972. These notices of deficiency were issued on the grounds that the income derived from the petitioner's activities as a salesman was subject to unincorporated business tax.

2. Petitioner was a greeting card salesman for Panda Prints, Inc. during the years 1969 and 1972. He was paid on a commission basis and, in addition, he received a weekly travel allowance of \$25.00.

3. During 1969, Panda Prints, Inc. did not withhold payroll taxes from petitioner's commission income, nor did said firm include petitioner in other employee-related programs. However, during 1972, said firm withheld payroll taxes and covered the petitioner for Federal and State unemployment insurance, disability insurance, and workmen's compensation insurance.

4. During the years in question, petitioner was assigned an exclusive sales territory by Panda Prints, Inc., which included Brooklyn, Queens, and Staten Island in New York City as well as Nassau, Suffolk and parts of Westchester County. His normal work week for Panda Prints, Inc. during 1969 and 1972 was from 9:00 A.M. to 5:00 P.M. on Monday through Friday. He was instructed as to the customers to call on and was required to telephone his employer daily for further instructions. Panda Prints, Inc. restricted petitioner from representing other firms.

5. Petitioner represented firms other than Panda Prints, Inc. in 1969 and 1972. He sold other lines of greeting cards and stationery without the consent or knowledge of said firm.

6. Petitioner contended that in order to prevent Panda Prints, Inc. from discovering his other selling activities, he sold the other lines of greeting cards and stationery to retail stores who did not buy from Panda Prints, Inc. These lines were sold during evenings and on weekends when he was not required to account for his time and activities to Panda Prints, Inc.

7. During 1969 and 1972, petitioner realized a gross profit from his sales activities on behalf of firms other than Panda Prints, Inc. of \$5,292.10 and \$6,395.33, representing 29% and 38% of his total income for said years, respectively. Petitioner

reported business expenses on Federal schedules "C" for the years 1969 and 1972, attributable to his sales activities on behalf of Panda Prints, Inc. and on behalf of the other firms he represented of \$3,591.56 and \$1,984.85, respectively.

8. Due to the failing health of petitioner David Cohen, his wife, Sylvia Cohen frequently aided him in selling and servicing his accounts on behalf of Panda Prints, Inc. and the other firms he represented during the years 1969 and 1972. Therefore, it was argued that if petitioner is subject to unincorporated business tax, a business deduction should be allowed in computing the unincorporated business tax liability for wages payable to Sylvia Cohen as an employee in connection with the sales activities of petitioner. However, petitioner did not pay his wife a salary during 1969 and 1972, did not claim a business deduction for salary payments to his wife on Federal schedules "C" for said years and did not list her as a partner with respect to such sales activities.

#### CONCLUSIONS OF LAW

A. That Panda Prints, Inc. exercised sufficient direction and control over petitioner's sales activities to result in an employer-employee relationship within the meaning and intent of section 703(b) of the Tax Law. Therefore, income received by petitioner from Panda Prints, Inc. during 1969 and 1972 in the

amounts of \$12,960.46 and \$10,224.04, respectively, is not subject to unincorporated business tax.

B. That the petitioner's selling activities on behalf of firms other than Panda Prints, Inc. constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law. Therefore, the income derived therefrom of \$5,292.10 and \$6,395.33 for the years 1969 and 1972 respectively, is subject to unincorporated business tax. However, no unincorporated business tax is due for said years after the allowance of deductions for business expenses of \$1,041.55 for 1969 and \$754.24 for 1972 (29% and 38%, respectively of the total business expenses claimed in Federal schedules "C"), and after the statutory allowances provided by sections 708(a) and 709(1) of the Tax Law.

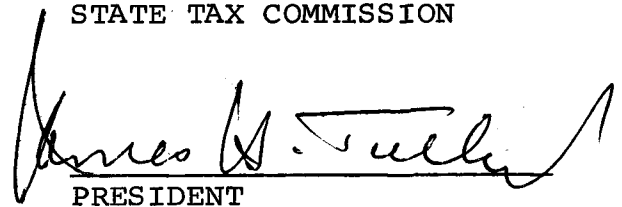
C. That since no unincorporated business tax is due for the years 1969 and 1972, the issue regarding the request for the allowance of a business deduction for salaries payable to Sylvia Cohen for said years is moot and need not be decided.



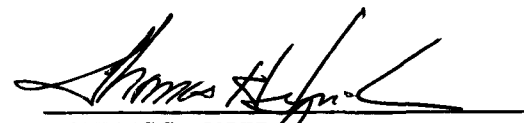
D. That the petition of the Estate of David Cohen is granted and the notices of deficiency issued on November 29, 1971 and July 28, 1975 for the years 1969 and 1972, respectively, are cancelled.

DATED: Albany, New York  
December 1, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

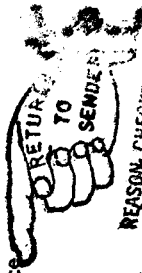
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



REASON CHECKED

- ☒ Unclaimed
- ☒ Addressee unknown
- ☒ Insufficient Address
- ☒ No such street
- ☒ No such office in city
- ☒ Do not reside in this city
- ☐ Refused

Michael Russell, CPA

6 Vista Lane

Edgewater, New Jersey 07020

*NR*  
*12/3/77*

*NR*

*12-3-77*  
*12-13-77*  
*12-18-77*

**CERTIFIED**

No. 400112

**MAIL**



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STATE TAX COMMISSION

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Sworn to before me this

27 day of December , 19 77

Janet Mack

John Huhn