

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

J. DAVID GOLDIN

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 :

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 22 day of July, 1977, she served the within  
Notice of Decision by (certified) mail upon J. David Goldin

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. J. David Goldin  
P.O. Box H  
Croton-on-Hudson, New York 10520

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

22 day of July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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Tax Law for the Year(s) ~~or Period(s)~~ 1971 :

State of New York  
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age, and that on the 22 day of July, 1977, she served the within  
Notice of Decision by (certified) mail upon Michael A. Bank, 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 A. Bank, CPA  
1250 Broadway  
New York, New York

and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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the United States Postal Service within the State of New York.

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Sworn to before me this

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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

July 22, 1977

Mr. J. David Goldin  
P.O. Box 8  
Croton-on-Hudson, New York 10520


Dear Mr. Goldin:

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 Chysywy**  
**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	:	
	:	
J. DAVID GOLDIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1971.	:	

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Petitioner, J. David Goldin, residing at P.O. Box H, Croton-on-Hudson, New York 10520, 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 1971 (File No. 12625).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on October 20, 1976 at 2:45 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Michael A. Bank, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

#### ISSUE

Whether the income received by the petitioner, J. David Goldin, from his activities as a radio engineering agent is subject to unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, J. David Goldin, imposing unincorporated business tax upon the income received by the petitioner from his activities as a radio engineering independent agent during the year 1971. The Income Tax Bureau also assessed penalties for underestimation of tax under section 685(c) of the Tax Law and penalties under sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file and pay unincorporated business tax.

2. During the year 1971, petitioner, J. David Goldin, received salary income from Columbia Broadcasting System, Incorporated as a radio engineer in the sum of \$1,109.72. He terminated his employment with said company early in 1971. He also owned stock in "The Shack W & L Corporation", which was a retail liquor store. He received a salary income of \$5,300.00 for administrative duties with said company.

3. In 1967 and 1970, petitioner, J. David Goldin, formed two corporations known as "Kos Records Corporation" and "Radiola Corporation", respectively. The petitioner owns 100% of the stock of both corporations. The corporations sell records and tapes of "Old Radio Shows" and other "Nostalgia" type items through mail

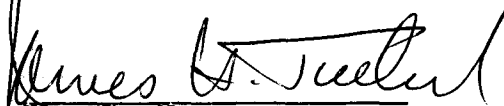
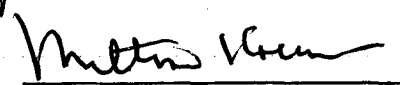
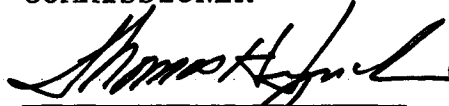
orders. The petitioner, as president and owner of said firms, received income in the form of commissions and later in the form of salaries. He received \$17,000.00 in the form of commission income and \$5,700.00 in salary income from Kos Records Corporation, and approximately \$5,000.00 in the form of commission income from Radiola Corporation for the year 1971.

4. That the income received by the petitioner, J. David Goldin, from the aforesaid firms during the year 1971 constituted compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

5. That the activities of the petitioner, J. David Goldin, during the year 1971 did not constitute the carrying on of an unincorporated business and the income derived therefrom is not subject to the unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

6. That the petition of J. David Goldin is granted and the Notice of Deficiency in the sum of \$2,193.40 issued March 31, 1975 is cancelled.

DATED: Albany, New York  
July 22, 1977

STATE TAX COMMISSION  
  
PRESIDENT  
  
COMMISSIONER  
  
COMMISSIONER