

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT E. GRAFF and JULES FIELD :

AFFIDAVIT OF MAILING

d/b/a GRAFF SALES CO.

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :

Taxes under Article ~~XX~~ 23 of the :

Tax Law for the ~~XXXXXX~~ :

FYE January 31, 1967.

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 25th day of November, 1977, she served the within
Albert E. Graff and

Notice of Decision

by (certified) mail upon Jules Field d/b/a

Graff Sales Co. ~~XXXXXXXXXX~~ the petitioner in the within proceeding,

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

as follows: Albert E. Graff and Jules Field

d/b/a Graff Sales Co.

201 East 79th Street

New York, New York 10021

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.

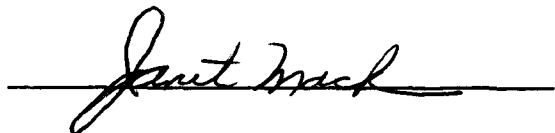
That deponent further says that the said addressee is the ~~XXXXXXXXXX~~

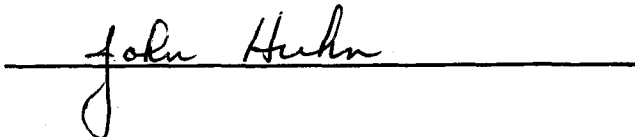
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the

last known address of the ~~XXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

25th day of November, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALBERT E. GRAFF and JULES FIELD :
d/b/a GRAFF SALES CO.

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (3) 23 of the :
Tax Law for the ~~XXXXXX~~ ~~XXXXXX~~ ~~XXXXXX~~ (X) :
FYE January 31, 1967.

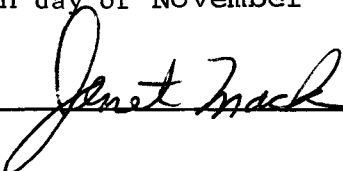
State of New York
County of Albany

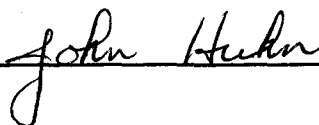
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of November , 1977, he served the within
Notice of Decision by (certified) mail upon Lewis
Rosenberg, Esq (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Lewis Rosenberg, Esq.
225 Broadway
New York, New York 10007
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

25th day of November , 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

November 25, 1977

Albert E. Graff and Jules Field
d/b/a Graff Sales Co.
201 East 79th Street
New York, New York 10021

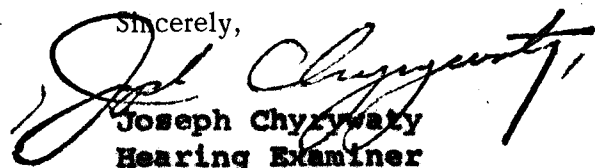
Gentlemen:

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 ~~(5)~~ **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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALBERT E. GRAFF AND JULES FIELD	:	DECISION
d/b/a GRAFF SALES CO.	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Fiscal	:	
Year Ended January 31, 1967.	:	

Petitioners, Albert E. Graff and Jules Field d/b/a Graff Sales Co., 201 East 79th Street, New York, New York 10021, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the fiscal year ended January 31, 1967 (File No. 00316).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 27, 1976 at 9:15 A.M. Petitioner Albert E. Graff appeared with his representative, Lewis Rosenberg and for petitioner Jules Field. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the income received by petitioners, Albert E. Graff and Jules Field d/b/a Graff Sales Co., during the fiscal year ended January 31, 1967 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners filed New York State income and unincorporated

business tax partnership returns for the fiscal years ended January 31, 1965, January 31, 1966 and January 31, 1967. For the fiscal years ended January 31, 1965 and January 31, 1966, petitioners paid unincorporated business tax in the amounts of \$807.62 and \$958.92, respectively. No unincorporated business tax was paid for the fiscal year ended January 31, 1967.

2. On February 24, 1970, the Income Tax Bureau issued a Notice of Deficiency against petitioners in the sum of \$1,493.97, upon the grounds that petitioners were liable for additional unincorporated business tax for the fiscal years ended January 31, 1965 and January 31, 1966 as a result of adjustments to their Federal income tax returns for said fiscal years, and that the income the petitioners received during the fiscal year ended January 31, 1967 was subject to unincorporated business tax. The petitioners are not contesting the additional unincorporated business tax assessed for the fiscal years ended January 31, 1965 and January 31, 1966.

3. Petitioners, Albert E. Graff and Jules Field, contended that Graff Sales Co. was dissolved effective February 1, 1966 and, therefore, the income (representing sales commissions) that was reported on the New York State partnership return for the fiscal year ended January 31, 1967 was not subject to the unincorporated business tax. The petitioners based their contention on a Memorandum of Understanding signed by them which stated in its entirety:

"WHEREAS the parties undersigned have been members of a partnership under the name of Graff Sales Co. since 1947; and

WHEREAS each had been employed jointly as sales representatives for the sale of corrugated paper containers and had distributed the net proceeds of the commissions so earned on the basis of 60/40 (60% having been received by Albert E. Graff, residing at 201 East 79th Street, New York, New York and 40% having been received by Jules Field residing at 679 West 239th Street, Riverdale, New York); and WHEREAS the parties wish to discontinue and dissolve their partnership. However, with respect to their employment by the Interstate Container Corporation (the company) as sales representatives, it would be mutually advantageous for commission earned from said company to continue to be transmitted to and received for the account of Graff Sales Co. since this would avoid having the Company take over the parties' accounts as house accounts.

NOW, in consideration of the mutual covenants contained herein, it is agreed that the parties shall have dissolved their partnership.

It is further agreed that with respect to the Company the parties shall continue employment as sales representatives acting independently of each other.

However, the commissions earned by Jules Field from the Company shall be continued to be deposited to the account of Graff Sales Co. and remitted to Jules Field by Albert E. Graff without any deductions.

It is further understood that Albert E. Graff may continue to carry on individually under the name and style Graff Sales Co.

This agreement shall be effective as of February 1, 1966."

4. During the fiscal year ended January 31, 1967, petitioner Albert E. Graff represented only Interstate Container Corp. Petitioner Jules Field represented other principals in addition to Interstate Container Corp. However, all commissions earned by petitioners from sales made on behalf of Interstate Container Corp. were paid to Graff Sales Co. and deposited in petitioner Albert E. Graff's account. Petitioner Albert E. Graff then transferred the commissions due petitioner Jules Field to him.

5. During th fiscal year ended January 31, 1967, petitioners individually paid for the expenses they incurred in connection with their sales activities.

6. The Federal partnership return for the fiscal years ended January 31, 1965, January 31, 1966 and January 31, 1967 did not substantially change with respect to income and expenses claimed for those fiscal years. In the U.S. partnership return of income filed by Graff Sales Co. and attached to the New York State partnership return for the Fiscal year ended January 31, 1967, the partners are listed as Albert E. Graff and Jules Field. Said return indicates that each partner devotes all of his time to Graff Sales Co.

7. Petitioners did not present an explanation as to why they filed Federal and New York State partnership returns for the fiscal year ended January 31, 1967, in light of the fact that the partnership was allegedly dissolved for said fiscal year.

CONCLUSIONS OF LAW

A. That although petitioners had signed an agreement dissolving the partnership, other facts indicated that they were operating jointly with respect to their selling activities involving Interstate Container Corp. Regardless of whether or not the partnership was, in fact, dissolved on February 1, 1966, their relationship after said date, at the least, constituted a joint venture.

B. That Graff Sales Co. was an unincorporated business during the fiscal year ended January 31, 1967 in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the income received by Graff Sales Co. during the fiscal year ended January 31, 1967 was subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

D. That the petition of Albert E. Graff and Jules Field d/b/a Graff Sales Co. is denied and the Notice of Deficiency issued on February 24, 1970 is sustained, together with such interest as may be lawfully due.

DATED: Albany, New York

November 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER