

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRIS HARDWARE INDUSTRIES 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 (x) 23 of the :  
Tax Law for the Year(s) ~~or Part of~~ (x) :  
1967 and 1968.

State of New York  
County of Albany

Bruce Batchelor , 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 28th day of February , 19 77, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Harris Hardware  
Industries Co. (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows:

Harris Hardware Industries Co.  
865 Essex Street  
Brooklyn, New York 11208

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

28th day of February , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRIS HARDWARE INDUSTRIES 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 (x) 23 of the :  
Tax Law for the Year(s) ~~xx~~ Period(s) :  
1967 and 1968.

State of New York  
County of Albany

Bruce Batchelor, 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 28th day of February, 1977, he served the within  
Notice of Decision by (certified) mail upon Isidore Feldman, CPA

(representative of) the petitioner in the within proceeding,

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

Isidore Feldman, CPA  
1180 Avenue of the Americas  
New York, New York 10036

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

28th day of February, 1977

Bruce Batchelor

Janet Todd



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

February 28, 1977

TELEPHONE: (518) **457-1723**

Harris Hardware Industries Co.  
865 Essex Street  
Brooklyn, New York 11208

Gentlemen:

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(§) **722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

**Paul E. Coburn**  
Supervising Tax  
Hearing Officer

Enc.

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	:	
	:	
HARRIS HARDWARE INDUSTRIES CO.	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1967 and 1968.	:	

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Petitioner, Harris Hardware Industries Co., 865 Essex Street, Brooklyn, New York 11208, 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 1967 and 1968.

(File No. 00290).

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 September 14, 1976, at 10:45 A.M. Petitioner appeared by Isidore Feldman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Arnold Dorman, Esq. of counsel).

ISSUE

Whether petitioner, Harris Hardware Industries Co., was subject to unincorporated business tax for the years 1967 and 1968 where its limited partner was a tax exempt organization.

FINDINGS OF FACT

1. Petitioner, Harris Hardware Industries Co., timely filed New York State partnership returns for 1967 and 1968. On June 15, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner imposing additional unincorporated business tax due, on the ground that their business activities constituted the carrying on of an unincorporated business and as such, all income derived therefrom was subject to the unincorporated business tax. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$9,339.51, plus interest of \$665.81, for a total of \$10,005.32.

2. In 1967 and 1968, petitioner, Harris Hardware Industries Co., was a partnership consisting of an individual, Robert M. Bernstein and a synagogue, Temple Beth-Ami, an exempt organization. It was in the business of selling and distributing hardware and related products in two locations, Philadelphia and Brooklyn. Robert M. Bernstein was a general partner. Temple Beth-Ami was a limited partner who contributed capital assets of \$250,000.00, and who was to share in the profits to the extent of 90% until December, 1981, after which it was to be reduced to 50%.

3. Harris Hardware Industries Co. withdrew its claim with respect to the \$5,000.00 deduction as a partner service allowance for Temple Beth-Ami.

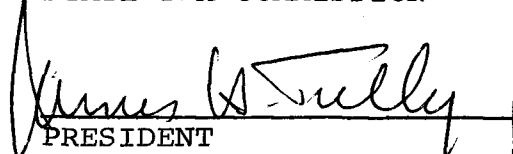
CONCLUSIONS OF LAW

A. That Temple Beth-Ami, which has a tax exempt status, is subject to income tax on income from business enterprises not related to the purpose for which it received its exemption according to the meaning of the Internal Revenue Code sections 501(a) and 501(b). The exemption for tax exempt organizations set forth in section 703(g) of the Tax Law does not exempt from unincorporated business tax the income derived by a partnership in which the limited partner is a tax exempt organization, where the business of the partnership is unrelated to the purpose of the exempt organization. Therefore, petitioner, Harris Hardware Industries Co. was a taxable entity for unincorporated business tax purposes for the years 1967 and 1968 under section 703 of the Tax Law.


B. That the petition of Harris Hardware Industries Co. is denied.

DATED: Albany, New York  
February 28, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER