

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID KAPSACK

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 Period(s)~~ :
1972 and 1973.

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 20th day of May, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon David Kapsack

(~~representative of~~) the petitioner in the within proceeding,

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

Mr. David Kapsack
30 Park Terrace
Congers, New York 10920

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~~
~~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

20th day of May, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK .
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID KAPSACK

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 Period(s)~~ :
1972 and 1973.

State of New York
County of Albany

Bruce Batchelor , 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 20th day of May , 19 77, she served the within
Notice of Decision by (certified) mail upon Raphael Lieberman

(representative of) the petitioner in the within proceeding,

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

Mr. Raphael Lieberman
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

20th day of May , 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

May 20, 1977

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

Mr. David Kapsack
30 Park Terrace
Congers, New York 10920

Dear Mr. Kapsack:

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,

Frank J. Puccio
Frank J. Puccio
Supervisor of
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID KAPSACK

DECISION

for Redetermination of a Deficiency or
for Refund of Unincorporated Business
Taxes under Article 23 of the Tax Law
for the Years 1972 and 1973.

Petitioner, David Kapsack, residing at 30 Park Terrace,
Congers, New York 10920, 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 1972 and 1973.

(File No. 12154)

A small claims hearing was held before Philip Mercurio, Small
Claims Hearing Officer, on January 26, 1977 at 1:15 p.m. at the
offices of the State Tax Commission, Two World Trade Center, New
York, New York. The petitioner appeared by Raphael Lieberman.
The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox,
Esq. of counsel).

ISSUE

Whether the income received by the petitioner, David Kapsack, from his activities in advertising and public relations during the years 1972 and 1973, was subject to the imposition of unincorporated business tax or was he an employee exempt from the imposition of such tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The petitioner received a weekly salary income in the amount of approximately \$250.00 from David/Walker Associates, Inc. which was an advertising firm. For the taxable years in question, this was substantially all of his income.

2. Petitioner, David Kapsack's work with said firm consisted primarily of developing an advertising campaign for various manufacturers to sell their product. These manufacturers were clients of David/Walker Associates, Inc. The petitioner was an officer of said corporation, he was supplied with an office and was required to work a normal workday.

3. Petitioner, David Kapsack, also wrote articles for various newspaper and magazine publications. The petitioner performed this work after normal working hours and on weekends. This work was not related to the work performed by the petitioner for David/Walker

Associates, Inc. The petitioner, David Kapsack, received approximately \$3,000.00 to \$4,000.00 per year from the above said activities.

4. The income received by petitioner, David Kapsack, from David/Walker Associates, Inc. during the years 1971 and 1972 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. The other income received by the petitioner, David Kapsack, from his activities of writing articles for various newspapers and magazines is not at issue, since the amount received by the petitioner would not generate an unincorporated business tax liability.

6. The petition of David Kapsack is sustained and the Notice of Deficiency in the amount of \$1,266.03 issued on May 19, 1975 is cancelled.

DATED: Albany, New York
May 20, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER