

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JEROME M. LAYTON

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 (XXXX Period(s)) :
1960

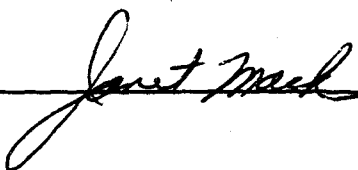
State of New York
County of Albany


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 16th day of August, 19 77, she served the within
Notice of Decision by (certified) mail upon Jerome M. Layton
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Jerome M. Layton
215 East 68th Street
New York, New York
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)~~
~~(XXXX)~~ 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

16th day of August, 19 77





STATE OF NEW YORK
STATE TAX COMMISSION

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of

JEROME M. LAYTON

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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of Unincorporated Business :
Taxes under Article (X) 23 of the :
Tax Law for the Year ~~(XXXXXX) or Period(s)~~ :
1960

State of New York
County of Albany

Marsina Domnini, 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 16th day of August, 19 77, she served the within
Notice of Decision by (certified) mail upon Eli B. Fine
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Eli B. Fine
31 South Broadway
Yonkers, New York
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

16th day of August, 19 77

Marsina Domnini

Just M. M.



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

August 16, 1977

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

Mr. Jerome M. Layton
215 East 68th Street
New York, New York

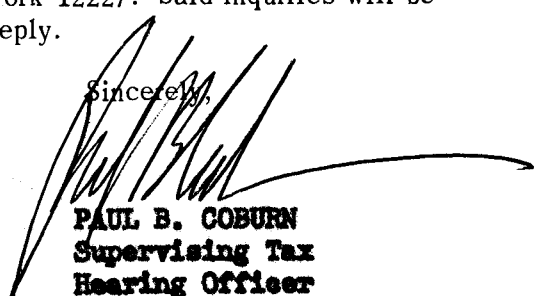
Dear Mr. Layton

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 **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,


PAUL B. COBURN
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JEROME M. LAYTON	:	DECISION
	:	
for a Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Year 1960.	:	

Jerome M. Layton, residing at 215 East 68th Street, New York, New York, 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 1960. (File No. 01886).

A formal hearing was held at the offices of the State Tax Commission at 80 Centre Street, New York, New York, before Solomon Sies, Hearing Officer.

ISSUE

Whether the salary income received by petitioner from three corporations in 1960 was subject to unincorporated business tax?

FINDINGS OF FACT

1. The petitioner filed a resident New York personal income tax return for the year 1960 in which he reported gross income as a television producer as follows:

Brad Jacey Inc.	\$28,485.11
Wilbur Stark & Jerry Layton Inc.	40,000.00
Jody Pan Inc.	2,000.00
Miscellaneous (Dividend Income)	<u>1,881.00</u>
	\$72,366.11

He reported net income in the amount of \$32,183.24.

2. On January 6, 1964, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Jerome M. Layton, for the year 1960 imposing unincorporated business tax in the amount of \$1,298.71 including penalty and interest on the ground that the petitioner's net income represented profit from business subject to unincorporated business tax. A Notice of Deficiency was accordingly issued against taxpayer for said year. The petitioner timely filed a petition for redetermination of said deficiency.

3. Wilbur Stark & Jerry Layton Inc. was a corporation organized under the laws of State of New York and maintained an office in New York City. Jody Pan Inc. and Brad Jacey Inc. were corporations organized under the laws of State of California and maintained offices in California. Wilbur Stark and petitioner, Jerry M. Layton were officers and directors in each of the aforementioned corporations and each owned 50% of the capital stock of each of said corporations. All of the above named corporations were engaged in the business of television production.

4. Prior to February 19, 1960, the petitioner and Wilbur Stark each received a weekly salary from Wilbur Stark & Jerry Layton Inc. from which withholding and social security taxes were withheld. The aforementioned salaries received by Layton and Stark represented compensation as officers

and directors of the corporation.

5. In January 1960, the petitioner and Stark had a dispute and decided to sever their connections and dissolve the New York and California corporations as soon as the contracts for certain productions were terminated. During the month of January 1960, the petitioner received from Wilbur Stark and Jerry Layton Inc. salary in the amount of \$3,000.00 from which social security and withholding taxes were withheld.

6. By oral agreement entered into between the petitioner and Wilbur Stark an arrangement was made effective February 1, 1960, whereby petitioner was to supervise the productions of the New York corporation and Stark was to supervise the productions of the California corporations. It was agreed that after actual production costs of the various programs petitioner and Stark would each receive as compensation for their services to the corporations 50% of the income derived therefrom which was charged to production expenses on the books of the corporations. It was further agreed that neither the petitioner nor Stark was to be reimbursed for expenses incurred in connection with their activities on behalf of the aforementioned corporations.

7. The income received by the petitioner in 1960 as more fully set forth in Finding numbered "1", supra, represented compensation as an officer and director of corporations and not as an independent contractor.

CONCLUSIONS OF LAW

A. That the performance of services by petitioner as an officer and director of corporations during the year 1960 did not constitute the carrying on of an unincorporated business within the intent and meaning of section 703(b) of the Tax Law.

B. That the income received by petitioner as an officer and director of Wilbur Stark and Jerry Layton, Inc., Brad Jacey, Inc. and Jody Pan, Inc. during the year 1960 was not subject to unincorporated business tax in accordance with the provisions of section 703 of the Tax Law.

C. That the petition of Jerome M. Layton is hereby granted and the Statement of Audit Charges and Notice of Deficiency dated January 6, 1964 be and the same are hereby cancelled.

DATED: Albany, New York
August 16, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



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

August 16, 1977

UBT

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

Mr. Jerome M. Layton
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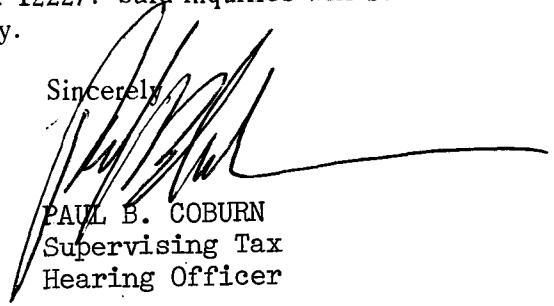
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Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,



PAUL B. COBURN
Supervising Tax
Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

TA-26 (4-76) 25M **FORMAT HEARING**
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

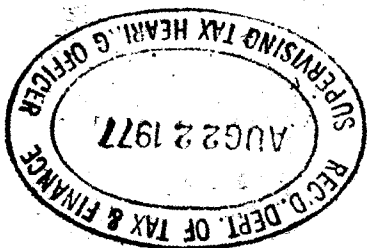
No.

401863

MAIL

CERTIFIED

☒ Addressee unknown
N.Y. 10021



Mr. Jerome M. Layton
215 East 68th Street
New York, New York

Unknown
8/19/77
D&D
836

STATE OF NEW YORK

STATE TAX COMMISSION

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