

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN MARINACE

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 ~~(x) 1971~~ 1971. :

State of New York
County of Albany

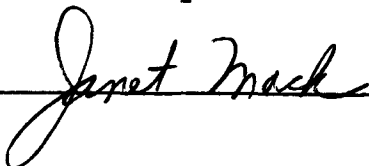
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of September , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon John Marinace
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. John Marinace
17 Tuxedo Drive
Melville, New York 11746

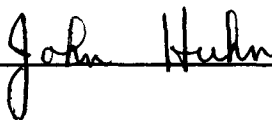
and by depositing same enclosed in a postpaid, properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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~~) petitioner.

Sworn to before me this

22nd day of September , 1977.





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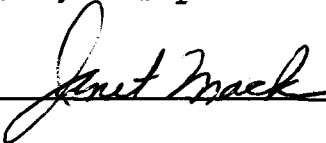
State of New York
County of **Albany**

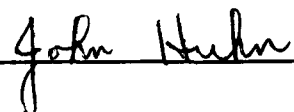
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~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
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Notice of Decision by (certified) mail upon Frank Narbutt
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Frank Narbutt, Accountant
75 Milford Street
Brooklyn, New York 11209
and by depositing same enclosed in a postpaid properly addressed wrapper in a
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STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

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

September 22, 1977

Mr. John Marinace
17 Tunedo Drive
Malville, New York 11746

Dear Mr. Marinace:

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,

Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JOHN MARINACE	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1971.	:	

Petitioner, John Marinace, residing at 17 Tuxedo Drive, Melville, New York 11746, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1971. (File No. 00302)

A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 23, 1977 at 9:15 A.M. The petitioner appeared by Frank Narbutt. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether petitioner's income from his activities as an outside salesman during the year 1971 should be allocated as income from a business carried on within and without the State of New York, pursuant to section 707 of the Tax Law.

FINDINGS OF FACT

1. On March 25, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner, John Marinace, in the sum of \$273.96, on the grounds that the income received by petitioner from his activities as an outside salesman during 1971 was subject to the unincorporated business tax.

2. Petitioner, John Marinace, filed a New York State unincorporated business tax return for the year 1971. On said return, he allocated his business income based on sales within and without New York State. He listed offices located in Passaic, New Jersey and Melville, New York, as places where he regularly carried on his business.

3. During the year 1971, petitioner was an outside salesman for Uniroyal, Inc. and other unaffiliated firms. The petitioner received commission income of \$16,399.00 during said year, of which \$11,581.59 was received from Uniroyal, Inc.

4. Petitioner had a written contract with Uniroyal, Inc. which permitted him and his customers access to the firm's plant in Passaic, New Jersey. Petitioner contended that he was supplied with office space and secretarial and clerical services at this location for or on behalf of Uniroyal. He maintained an office at his home located in Melville, New York during the year 1971.

5. Petitioner did not file a New Jersey unincorporated business tax return for the year 1971.

CONCLUSIONS OF LAW

A. That although petitioner performed services for, and may have been provided with office space by Uniroyal, Inc. at its plant in Passaic, New Jersey, such office space did not constitute petitioner's regular place of doing business outside New York State within the meaning and intent of section 707 of the Tax Law. Therefore, all of petitioner's income from his activities during the year 1971 must be allocated to New York State in accordance with the meaning and intent of section 707 of the Tax Law.

B. That the petition of John Marinace is denied and the Notice of Deficiency issued on March 24, 1974 is sustained.

DATED: Albany, New York
September 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M

SMALL CLAIMS

STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Frank Narbutt, Accountant
75 Milford Street
Brooklyn, New York 11208

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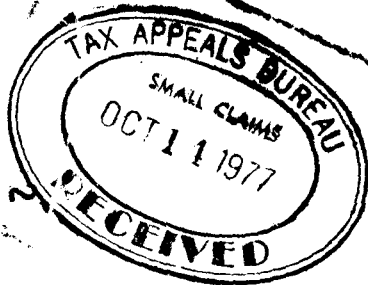
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State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
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last known address of the (representative of the) petitioner.

Sworn to before me this

19th day of October , 1977.

Janet Mack

John Huhn