

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOSEPH A. MARTINO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(8)~~ 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1969 and 1970

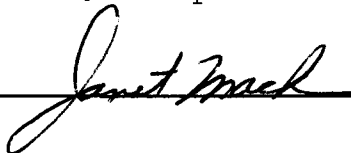
State of New York
County of Albany

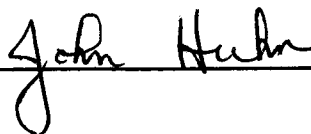
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September, 1977, he served the within
Notice of Decision by (certified) mail upon Joseph A. Martino
~~representative of~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Joseph A. Martino
9 Shelter Rock Road
Manhasset, New York 11030
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~~
~~XXXXXX~~ 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

29th day of September, 1977.





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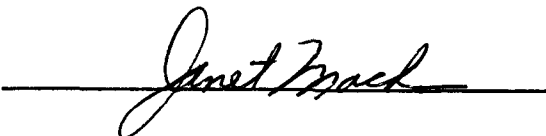
State of New York
County of Albany

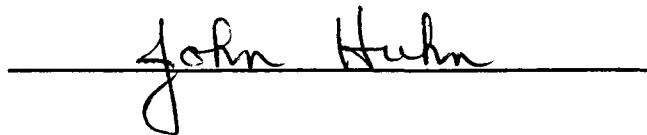
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of September, 1977, he served the within
Notice of Decision by (certified) mail upon Harold K. King, Esq.
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harold K. King, Esq.
111 Broadway
New York, New York 10006
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

29th day of September, 1977.







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

September 29, 1977

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

**Joseph A. Martino
9 Shelter Rock Road
Manhasset, New York 11030**

Dear Mr. Martino:

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 **(§ 690)** 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,

**JOHN J. SOLLECITO
DIRECTOR**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH A. MARTINO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1969 and 1970.	:	

Petitioner, Joseph A. Martino, 9 Shelter Rock Road, Manhasset, New York 11030, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1969 and 1970. (File No. 12714).

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 May 26, 1977 at 1:15 P.M. Petitioner appeared by Harold K. King, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner, Joseph A. Martino, was subject to unincorporated business tax during 1969 and 1970 upon income received for his directorships.

FINDINGS OF FACT

1. On June 24, 1974, the Income Tax Bureau issued a Statement of Audit Changes imposing unincorporated business tax against petitioner, Joseph A. Martino, upon the ground that his activities as consultant were subject to unincorporated business tax for the years 1969 and 1970. Accordingly, it issued a Notice of Deficiency in the amount of \$8,797.69, plus penalty and interest of \$5,954.00, for a total of \$14,751.69.

2. Petitioner, Joseph A. Martino, timely filed New York State income tax returns for 1969 and 1970. For the past fifty years, Joseph A. Martino was president, chief executive officer and chairman of the Board of National Lead Company now known as National Lead Industry, Inc. He reached mandatory retirement age in 1965. The resolution adopted at the meeting held on February 27, 1968 by the Board of Directors of National Lead Company stated "Whereas, Mr. Martino has requested the Board of Directors to accede to his wish to relinquish the post of chairman of the Board and chief executive officer and all managerial, executive and employment duties; and, whereas, the Board of Directors is willing to honor Mr. Martino's request but desires to be assured that Mr. Martino will continue to make available to the Company his counsel and widespread business experience as a Director and, in his capacity as a Director, as a member of the Executive Committee:

Now, Therefore, it is

Resolved, that the Board of Directors having received from Mr. Martino the assurances aforesaid, does hereby accede to his wish to relinquish the office of chairman of the Board and chief executive officer of the company and all managerial, executive and employment duties on and after March 31, 1968. Further Resolved, that the Board of Directors does hereby authorize and approve an annual payment of \$75,000 to Mr. Martino for a period of three years from April 8, 1968, in acknowledgement and appreciation of his long years of past service with National Lead Company.

3. Petitioner, Joseph A. Martino, was a member of the Port Authority and the New York Racing Commission. In 1968, he had a succession of strokes. His last appearance and connection with the company was the Christmas cocktail party on December 24, 1967. While in Florida in February of 1969, where he went early each year when the weather became cold, he had a severe stroke that hospitalized him and prevented any activity by him. He could neither speak, write nor participate in any business activity. He was totally incapacitated.

4. Petitioner, Joseph A. Martino, received the following income during the years in issue as a Director, upon which he paid income tax.

	<u>1969</u>	<u>1970</u>
National Lead	\$ 75,000.00	\$75,000.00
American Broadcasting Co.	5,400.00	782.92
Alleghany Steel Co.	3,400.00	250.00
Chase Manhattan Bank	7,075.00	1,250.00
Continental Insurance Co.	3,900.00	600.00
East River Savings Bank	650.00	-----
Goodyear Tire & Rubber Co.	<u>5,400.00</u>	<u>1,250.00</u>
Total	\$101,825.00	\$79,132.95

5. During the years in issue, petitioner, Joseph A. Martino, acted in good faith and upon the advice of counsel.

CONCLUSIONS OF LAW

A. That during the years in issue, petitioner, Joseph A. Martino, as director of seven corporations for which he received various amounts of income, was liable for the imposition of unincorporated business tax; that such services constitute part of a business regularly carried on by petitioner in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the petition of Joseph A. Martino is granted to the extent that penalties imposed pursuant to section 685(a)(1) and (2) of the Tax Law are cancelled; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued June 24, 1974; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

STATE TAX COMMISSION

September 29, 1977

I dissent

James A. Tuel

PRESIDENT

Milton Koehn

COMMISSIONER

Thomas H. L.

COMMISSIONER