

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
EDWIN V. MEAD

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of **Unincorporated Business** :  
Taxes under Article (s) 23 of the :  
Tax Law for the Year(s) ~~xxxxxx~~ ~~xxxxxx~~ :  
1967 through 1973

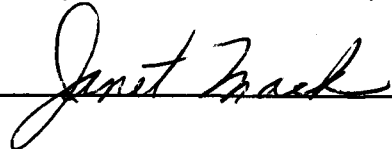
State of New York  
County of Albany

John Huhn, 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 7 day of December, 1977, she served the within  
Notice of Decision by (certified) mail upon Edwin V. Mead  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Edwin V. Mead  
115-27 218th Street  
Cambria Heights, New York 11411  
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

7 day of December, 1977.







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

**December 7, 1977**

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

**Edwin V. Mead**  
**115-27 218th Street**  
**Cambria Heights, New York 11411**

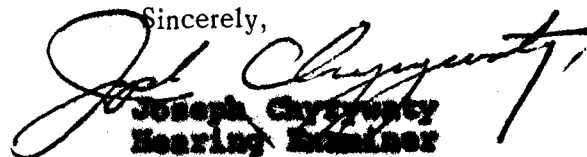
**Dear Mr. Mead:**

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 Chyorny**  
**Hearing Examiner**

cc: ~~Resident Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition

of

EDWIN V. MEAD

DECISION

for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax  
under Article 23 of the Tax Law for the  
Years 1967 through 1973.

---

Petitioner, Edwin V. Mead, residing at 115-27 218th Street,  
Cambria Heights, New York 11411, has filed a petition for redetermina-  
tion of a deficiency or for refund of unincorporated business tax  
under Article 23 of the Tax Law for the years 1967 through 1973  
(File Nos. 13305 and 13306).

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 April 29, 1977 at 2:45 P.M. The  
petitioner appeared by Martin Reffsin, CPA. The Income Tax Bureau  
appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

#### ISSUES

I. Whether the selling activities of the petitioner, Edwin V.  
Mead, during the years 1967 through 1973 constituted the carrying  
on of an unincorporated business.

II. Whether the petitioner, Edwin V. Mead, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1967 through 1970.

III. Whether the petitioner, Edwin V. Mead, if carrying on an unincorporated business, was entitled to a contribution deduction limited to five percent for the years 1967 through 1973.

FINDINGS OF FACT

1. Petitioner, Edwin V. Mead, and his wife filed New York State resident income tax returns for the years 1967 through 1973, inclusive. He did not file New York State unincorporated business tax returns for said years.

2. On April 13, 1973 and June 30, 1975, the Income Tax Bureau issued notices of deficiency against the petitioner, Edwin V. Mead, on the grounds that his activities constituted the carrying on of an unincorporated business. The notices of deficiency dated April 13, 1973, for the years 1967, 1968, 1969 and 1970 also imposed penalties under sections 685(a), 685(a)(1) and 685(a)(2) of the Tax Law. The Notice of Deficiency dated June 30, 1975, for the years 1971, 1972 and 1973, also included an adjustment increasing unincorporated business income for the years 1972 and 1973 in the sums of \$1,194.00 and \$2,853.00, respectively. However, this income was from gambling winnings and not subject to unincorporated business tax. The Bureau did not contest this at the hearing.

3. Petitioner, Edwin V. Mead, was a glass milk bottle salesman, operating on a commission basis and representing the Chattanooga Glass Company during the years 1967 through 1973. He also received a small amount of commission income during said years from Haynes Manufacturing Company and Sun Industries, Incorporated, both manufacturers of plastic handles for glass milk bottles. The petitioner did not actively solicit sales for the aforesaid manufacturers of plastic handles. The customer, while making a purchase from the petitioner, would request that either the type of handles made by Haynes Manufacturing or the type made by Sun Industries, be attached to the glass milk bottles. The cost of these handles would be incorporated into the invoice price. Chattanooga Glass Company would then purchase the handles and attach them to the glass milk bottles at their plant.

4. During the years 1967 through 1973, the firms from whom the petitioner, Edwin V. Mead, received commission income did not withhold Federal and New York State income taxes and social security taxes. He reported his commission income and business expenses on a Federal Schedule "C" during said years. He also maintained a self-employment retirement plan (Keogh Plan) during the years 1967 through 1971. However, the petitioner maintained that he was not aware that as an employee he was not eligible for the "Keogh Plan,"

and in 1972, he disavowed the plan and did not take any further adjustment deductions for the "Keogh Plan" from his income tax returns. He did not have any written employment contract and was not covered under any employee benefit plans.

5. While a salesman for the Chattanooga Glass Company, petitioner, Edwin V. Mead, could not represent any other principal. They limited his territory to the New York/New Jersey area and he was reimbursed for some of his business expenses. He was required by the firm to follow up all sales leads, delinquent accounts, and quality complaints by customers, and to attend dairy conventions. The firm also required sales forecasts twice a year and the establishment of quotas. He was in daily telephone contact with the firm and devoted substantially all of his time to the firm during the years 1967 through 1973.

6. Based upon a previous favorable decision by the Income Tax Bureau involving the same issues and facts, petitioner, Edwin V. Mead, did not file New York State unincorporated business tax returns for the aforesaid years.

7. Petitioner, Edwin V. Mead, contributed to religious and charitable organizations during the years 1967 through 1973.

CONCLUSIONS OF LAW

A. That Chattanooga Glass Company exercised sufficient direction and control over the petitioner to result in an employee-employer relationship within the meaning and intent of 20 NYCRR 203.10(b) .

B. That the income received by petitioner, Edwin V. Mead, during the years 1967 through 1973 constituted compensation as an employee exempt from the imposition of unincorporated business tax, within the meaning and intent of section 703(b) of the Tax Law.

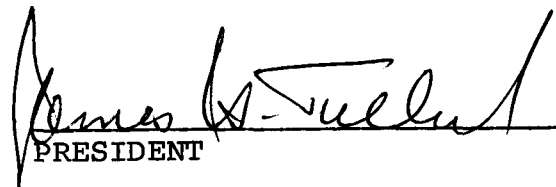
C. That the aforesaid activities of petitioner, Edwin V. Mead, during the years 1967 through 1973, did not constitute the carrying on of an unincorporated business and his income derived therefrom was not subject to the unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.

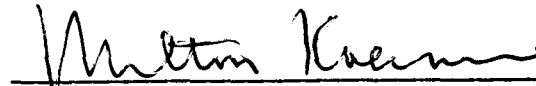
D. That the issues involving penalties and deductions for charitable contributions are moot, since the petitioner, Edwin V. Mead, was not subject to unincorporated business tax.


E. That the petition of Edwin V. Mead is granted and the notices of deficiency in the sums of \$3,467.16, \$1,035.83 and \$1,752.17 issued on April 13, 1973 and June 30, 1975, respectively, are cancelled.

DATED: Albany, New York  
December 7, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER