

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN and JOAN MORRIS

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) ~~or Period(s)~~ :  
1968, 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 15th day of September, 1977, he served the within  
Notice of Decision by (certified) mail upon Marvin & Joan Morris

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

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

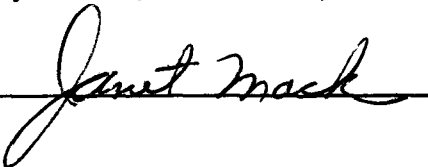
as follows: Mr. & Mrs. Marvin Morris  
2986 Holiday Park Drive  
Merrick, L.I., New York 11566

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~~  
~~xxxxx~~) 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

15th day of September, 1977.





STATE OF NEW YORK  
STATE TAX COMMISSION

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AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
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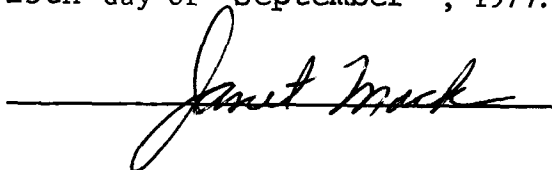
State of New York  
County of Albany

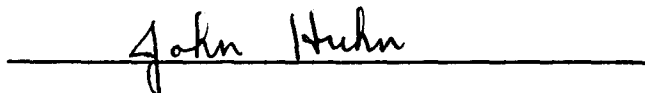
John Huhn , being duly sworn, deposes and says that  
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 15th day of September , 19 77 ~~she~~ he served the within  
Notice of Decision by (certified) mail upon Ely Amer  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Ely Amer  
913 Stratford Court  
Westbury, 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

15th day of September , 1977.







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 13, 1977**

**Mr. & Mrs. Marvin Morris**  
**2986 Holiday Park Drive**  
**Harrick, L.I., New York 11566**

**Dear Mr. & Mrs. Morris:**

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 **(b) 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

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In the Matter of the Petition	:	
of	:	
MARVIN and JOAN MORRIS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1968, 1969 and 1970.	:	

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Petitioners, Marvin and Joan Morris, residing at 2986 Holiday Park Drive, Merrick, Long Island, New York 11566, have 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 1968, 1969 and 1970. (File No. 13325).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on October 21, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioners appeared by Mr. Ely Amer. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether the income derived from the petitioner's activities as a salesman, during the years 1968, 1969 and 1970, is subject to the unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Marvin Morris, was a full-time salesman for Springfield Equities, Ltd. during 1969 and 1970.

2. Springfield Equities, Ltd. was a mortgage lending institution which hired the petitioner to solicit mortgage applications from real estate brokers, attorneys and speculators.

3. Petitioner was required to render services on a full-time basis, five days a week. He was also required to attend weekly sales meetings and to report by telephone on a daily basis.

4. Petitioner's activities were restricted to the Borough of Brooklyn in New York City and he was prohibited from soliciting for other mortgage lending firms.

5. Petitioner was provided with business cards and was paid \$25.00 per week as an expense allowance.

6. Commission income of \$17,098.00 was earned by the petitioner during 1969 from his activities as a salesman for Springfield Equities, Ltd. In addition, petitioner received \$2,000.00 in finders fees from various real estate investors for giving them leads on four houses that were for sale.

7. Commission income of \$19,005.00 was earned by the petitioner during 1970 from his activities as a salesman for Springfield Equities, Ltd. In addition, petitioner received \$8,750.00 in interest payments from loans made to Host Enterprises, Inc.

8. Although the tax year 1968 was included in the Notice of Deficiency issued November 26, 1973, income from the petitioner's activities during 1968 was not sufficient to generate an unincorporated business tax liability and accordingly, no information was submitted by either party for that year.

9. That sufficient direction and control was exercised by Springfield Equities, Ltd. to create an employee-employer relationship within the meaning and intent of former regulation section 20 NYCRR 281.3. Accordingly, the petitioner's income from his mortgage soliciting activities is not subject to the unincorporated business tax in accordance with section 703(b) of the Tax Law.

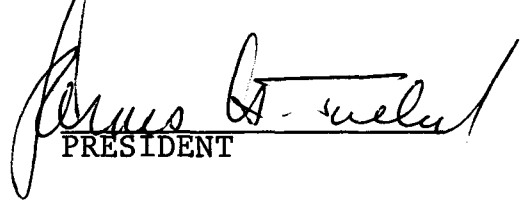
10. That the finders fees received in 1969, and the interest payments received in 1970, were isolated and incidental transactions and do not constitute the carrying on of an unincorporated business in accordance with the meaning and intent of section 703(a) of the Tax Law.

11. That the petition of Marvin and Joan Morris is granted and the Notice of Deficiency issued November 26, 1973 is cancelled.

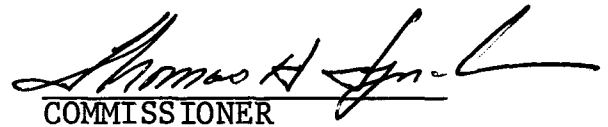
DATED: Albany, New York

September 1, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER