

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GREGORY J. PISSAREVSKY

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(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 15th day of September, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Gregory J. Pissarevsky

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

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

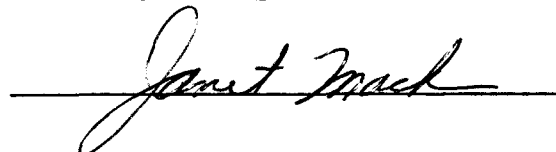
as follows: Mr. Gregory J. Pissarevsky
5535 Netherland Avenue
Bronx, New York 10471

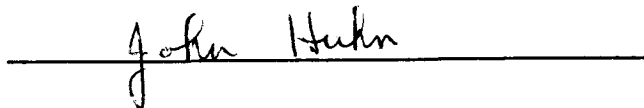
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~XXXXXX~~ 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

15th day of September, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GREGORY J. PISSAREVSKY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Unincorporated Business** :
Taxes under Article ~~(22)~~ 23 of the :
Tax Law for the Year(s) ~~xxx Period(s)~~ :
1969 and 1970.

State of New York
County of Albany

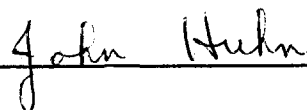
John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of September , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Max Zipper
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Max Zipper, CPA
Fields, Fischgrund & Aerenson
420 Lexington Avenue
New York, New York 10017
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 , 19 77







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 15, 1977

**Mr. Gregory J. Pissarevsky
5535 Netherland Avenue
Bronx, New York 10471**

Dear Mr. Pissarevsky:

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	:	
	:	
GREGORY J. PISSAREVSKY	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1969 and 1970.	:	

Petitioner, Gregory J. Pissarevsky, residing at 5535
Netherland Avenue, Bronx, New York 10471, has filed a petition
for redetermination of a deficiency or for refund of unincor-
porated business taxes under Article 23 of the Tax Law for the
years 1969 and 1970 (File No. 13358).

A small claims hearing was held before Joseph A. Milack,
Small Claims Hearing Officer, on October 19, 1976 at 1:15 p.m.
at the offices of the State Tax Commission, Two World Trade
Center, New York, New York. The petitioner appeared by Max
Zipper, CPA. The Income Tax Bureau appeared by Peter Crotty,
Esq. (Abraham Schwartz, Esq. of counsel).

ISSUES

I. Whether the income received by petitioner, Gregory J. Pissarevsky, from his activities as a commission salesman for Benrus Corporation during January and February of 1969 is subject to unincorporated business tax.

II. Whether petitioner's activities on behalf of Seiko Time Corporation, Chronotec, Inc. (previously Seiko Time Corporation) and Seiko Instruments, Inc. during the years 1969 and 1970 were so integrated and interrelated with his other business activities so as to constitute part of his unincorporated business.

III. Whether petitioner's income from his activities during 1969 and 1970 was allocable in accordance with the provisions of section 707 of the Tax Law.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner and his wife filed New York State combined income tax returns for the years 1969 and 1970. He did not file New York State unincorporated business tax returns for these years.

2. On December 23, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner in the sum of \$2,324.16, upon the grounds that the income he received during the years 1969 and 1970 was subject to unincorporated business tax.

3. During the year 1969, petitioner was a salesman for Benrus Corporation, restricted to accounts in Okinawa, Korea

and Japan. In addition, in the latter part of the year 1969, he was an account executive for Seiko Time Corporation in charge of the corporation's Sears account in Tokyo.

4. Petitioner was a salaried salesman of Benrus Corporation until his retirement in February of 1969. Federal and New York State income taxes and social security tax were withheld from the salary paid to him.

5. During January and February of 1969, petitioner sold exclusively for Benrus Corporation and was not employed or engaged by other firms.

6. On March 5, 1969, petitioner entered into an agreement with Benrus Corporation to act as a sales representative in Okinawa, Korea and Japan. The agreement stated that petitioner was to be an independent contractor and not an employee. Benrus Corporation did not withhold Federal or New York State income taxes or social security tax from the commission paid to him pursuant to the agreement.

7. During the year 1970, petitioner was a commission salesman for Benrus Corporation, an account executive for Seiko Time Corporation and Chronotec, Inc. (previously Seiko Time Corporation) and a watch repair consultant for Seiko Instruments, Inc.

In addition, he also sold for Baumgold Bros. and Sheffield Watch Co. of New York.

8. Petitioner conceded that the income he received from Benrus Corporation after March 5, 1969, Baumgold Bros. and Sheffield Watch Co. of New York was derived from an unincorporated business and therefore subject to unincorporated business tax. However, petitioner contended that his commission income from Benrus Corporation in 1969 and early 1970 was allocable as income earned entirely outside New York State within the meaning and intent of section 707 of the Tax Law, as his sales activities were conducted outside New York State and he did not maintain an office or a business phone in New York State, nor did he hire any employees. He further contended that the income he received from Benrus Corporation prior to his retirement, Seiko Time Corporation, Chronotec, Inc. (previously Seiko Time Corporation) and Seiko Instruments, Inc. was received from services rendered as an employee and therefore not subject to unincorporated business tax.

9. The Income Tax Bureau maintains that petitioner's activities as an employee of Seiko Time Corporation, Chronotec, Inc. (previously Seiko Time Corporation) and Seiko Instruments were so integrated and interrelated with his activities as a commission salesman in carrying on an unincorporated business that they constituted part of the unincorporated business.

10. On the Federal income tax return filed by petitioner for the years 1969 and 1970, petitioner did not separate the various sources of his income and reported said income in total, as gross receipts on schedule "C" of said returns.

11. Petitioner was not reimbursed for the expenses he incurred in connection with his activities, which required travel to Japan, and deducted such expense on schedule "C" of his Federal income tax returns filed for the years 1969 and 1970.

12. Petitioner did not present evidence to indicate that his activities as an account executive did not bear a relationship to or further his unincorporated business, nor did he establish a division of time between his various income producing activities.

13. That petitioner's activities as a commission salesman for Benrus Corporation prior to his retirement in February of 1969 constituted services rendered as an employee and the income derived therefrom is not subject to unincorporated business tax.

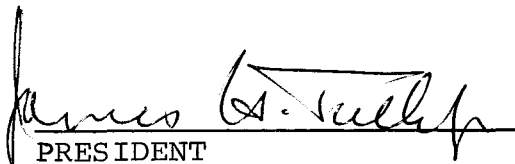
14. That petitioner's commission income from his sales activities for Benrus Corporation during the period from March of 1969 through early 1970 was allocable in full to New York State for New York State unincorporated business tax purposes within the meaning and intent of section 707 of the Tax Law as he has not shown that he maintained a place of business outside New York State.

15. That petitioner's activities as an employee of Seiko Time Corporation, Chronotec, Inc. (previously Seiko Time Corporation) and Seiko Instruments, Inc. were so integrated and interrelated with his activities in connection with his unincorporated business activities as to constitute part of a business regularly carried on by him and the income derived therefrom is subject to unincorporated business tax.

16. That the petition of Gregory J. Pissarevsky is granted to the extent indicated in paragraph 13 of this decision, and is denied in all other respects, and the Notice of Deficiency issued on December 23, 1974, adjusted to reflect the conclusions herein, is sustained.

DATED: Albany, New York
September 1, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER