

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RUBINSTEIN BROTHERS

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)~~ :  
F/Y/E January 31, 1968.

State of New York  
County of Albany

Bruce Batchelor , 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 4th day of March , 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Rubinstein Brothers

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

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Rubinstein Brothers  
c/o Braetan Juniors, Inc.  
512 Seventh Avenue  
New York, New York 10018

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 the)~~ petitioner.

Sworn to before me this

4th day of March , 1977.

Bruce Batchelor

Janet Zisch

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RUBINSTEIN BROTHERS

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (23) 23 of the :  
Tax Law for the ~~Year(s) or Period(s)~~ :  
F/Y/E January 31, 1968.

AFFIDAVIT OF MAILING

State of New York  
County of Albany

Bruce Batchelor, 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 4th day of March, 1977, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Arthur Kain  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Arthur Kain, CPA  
570 Seventh Avenue  
New York, New York 10018  
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

4th day of March, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

TELEPHONE: (518) **457-1723**

**Rubinstein Brothers  
c/o Braetan Juniors, Inc.  
512 Seventh Avenue  
New York, New York 10018**

**Gentlemen:**

Please take notice of the **DECISION**  
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to  
Section(**x**) **722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

Inquiries concerning the computation of tax  
due or refund allowed in accordance with this  
decision or concerning any other matter relative  
hereto may be addressed to the undersigned. They  
will be referred to the proper party for reply.

Very truly yours,

*Frank J. Puccia*  
**Frank J. Puccia  
Supervisor of Small  
Claims Hearings**

Enc.

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	:	
RUBINSTEIN BROTHERS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Fiscal Year Ending January 31, 1968.	:	

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Petitioner, Rubinstein Brothers, c/o Braetan Juniors, Inc., 512 Seventh Avenue, New York, New York 10018, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the fiscal year ending January 31, 1968. (File No. P/S 3871). A small claims hearing was held June 11, 1976 at 10:45 A.M. before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York. Isadore Rubinstein, a partner in Rubinstein Brothers, appeared for petitioner with petitioner's representative, Arthur Kain, C.P.A. The Income Tax Bureau appeared by Peter J. Crotty, Esq., (Irwin A. Levy, Esq., of counsel).

#### ISSUE

Whether or not a bona fide partnership existed in which partners were in fact conducting a business and are therefore subject to unincorporated business tax.

FINDINGS OF FACT

1. For the fiscal year ending January 31, 1968, Rubinstein Brothers filed a partnership return showing no unincorporated business tax due. On audit, the Income Tax Bureau held that the reported income was subject to New York State unincorporated business tax and issued a Notice of Deficiency dated January 18, 1971 in the amount of \$1,518.07 tax due.

2. In 1948, the two brothers were both traveling salesmen working on commission for the same employer in the garment industry. They cooperated with each other to obtain maximum sales for themselves. When one brother was on the road, the other brother would handle the other's customers at the home showrooms. In order to equalize their earnings, they consulted an accountant who advised them to form a partnership so that they could show and draw earnings that were equal, although different than the commissions each received. In 1954 the brothers, Isadore and Irving, together with a Mr. Murray Pearl, bought their employer's floundering business and formed a corporation which is now called Braetan Juniors Inc. Each had one-third ownership and Isadore Rubinstein was named president, Irving Rubinstein was vice-president and Murray Pearl was secretary treasurer. The corporation reported all income and deductions on its tax return. The Rubinstein brothers continued their partnership device, from which they derived no tax advantage, between themselves, on advice of their accountant. The mode of compensation was that the three

officers drew equal compensation. Mr. Pearl drew his full amount from the corporation. The Rubinstein Brothers drew a smaller amount from the corporation and the difference from the partnership.

3. Braetan Juniors Inc. was the source of all income to the Rubinstein brothers. They had no other employer.

4. Rubinstein Brothers never had an office or employees. There is no such telephone listing, no business cards, no letterheads and it was never named to the trade or public as an entity.

CONCLUSIONS OF LAW

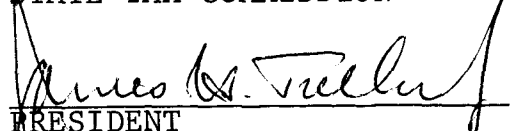
A. That Rubinstein Brothers was a personal device of Isadore and Irving Rubinstein and was not a business under the meaning and intent of section 703(a) of the Tax Law.

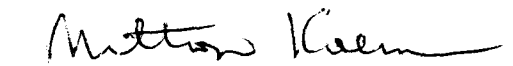
B. That they were employees of Braeton Juniors Inc. as per section 703(b) of the Tax Law.

C. That the petition of Rubinstein Brothers is granted and the Notice of Deficiency is cancelled.

DATED: Albany, New York  
March 4, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER