

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHIL and SUSAN SACKS

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) ~~or Period(s)~~ :
1971 and 1972.

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 25th day of November , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Phil & Susan Sacks

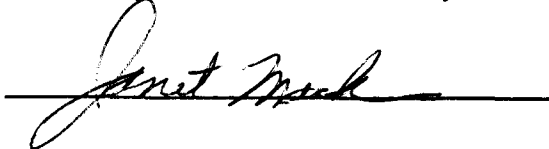
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Phil Sacks
8 Morahopa Road
Centerport, New York 11721

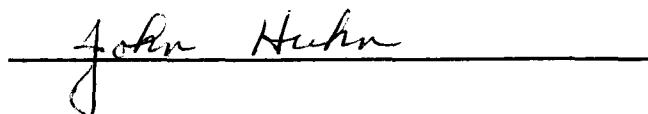
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

25th day of November , 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

November 25, 1977

**Mr. & Mrs. Phil Sacks
8 Morahopa Road
Centerport, New York 11721**

Dear Mr. & Mrs. Sacks:

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(2) **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 Chyzywaty
Hearing Examiner**

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PHIL and SUSAN SACKS :
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Years 1971 and 1972. :

Petitioners, Phil and Susan Sacks, residing at 8 Morahopa Road, Centerport, New York 11721, 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 1971 and 1972 (File No. 13771).

A small claims hearing was held before Joseph A Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1976 at 1:15 P.M. The petitioner Phil Sacks appeared pro se and for his wife, petitioner Susan Sacks, and by Gerald Rappaport. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the income received by petitioner Phil Sacks as a sales representative or salesman during the years 1971 and 1972 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Phil and Susan Sacks, filed joint New York State resident income tax returns for the years 1971 and 1972. Petitioners did not file unincorporated business tax returns for said years.

2. On December 22, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, Phil and Susan Sacks, based on a Statement of Audit Changes which held that commissions and wages received by Phil Sacks during 1971 and 1972 were subject to unincorporated business tax.

3. During the year 1971, petitioner Phil Sacks was a salesman representing Federal Builders Inc. ("Builders"), Brigadoon Scotch Distributors, Inc. ("Brigadoon"), and Lin Communications Services, Inc. ("Lin"). He represented Builders from January of 1971 through October 31, 1971, Brigadoon for a two-week period in January of 1971 and Lin from February of 1971 through the remainder of said year.

4. During the year 1972, petitioner Phil Sacks represented only Lin, and all of the income reported for 1972 was received from said firm.

5. Petitioner Phil Sacks did not present information pertaining to his activities representing Builders or Brigadoon.

6. During the years 1971 and 1972, Lin provided petitioner Phil Sacks with an office, a telephone and secretarial services. He was required to attend weekly sales meetings to report sales activities on a daily basis and to supervise other individuals employed by said firm.

7. Federal, New York State and social security taxes were withheld from the income received by petitioner Phil Sacks from Brigadoon for the year 1971. Payroll taxes were not withheld from the income he received from Builders and Lin for said year.

8. In 1972 petitioner Phil Sacks received \$14,996.00 from Lin, from which Federal, New York State and social security taxes were withheld. He also received commissions from Lin in the sum of \$34,225.00 during the year 1972, from which no payroll taxes were withheld.

9. Petitioner Phil Sacks was not reimbursed by any of his principals for the expenses he incurred in connection with his sales activities.

10. Petitioner Susan Sacks was not engaged in any business activities during the years 1971 and 1972.

CONCLUSIONS OF LAW

A. That the activities of petitioner Phil Sacks as a salesman for Lin in 1971 and 1972 did not constitute the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.

B. That petitioner Phil Sacks has not sustained the burden of proof necessary to establish that his activities on behalf of Brigadoon and Builders did not constitute the carrying on of an unincorporated business. However, after a deduction for personal services, allowance of a prorated exemption and a tax credit pursuant to Tax Law section 708, 709 and 701(b), respectively, no unincorporated business tax is due.


C. That petitioner Susan Sacks was not engaged in an unincorporated business during the years 1971 and 1972.

D. That the petition of Phil and Susan Sacks is granted and the Notice of Deficiency dated December 22, 1975 is cancelled.

DATED: Albany, New York
November 25, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER