

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEOFFERY SITOMER and BEHERA SITOMER

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~~ :
1972 and 1973.

State of New York
County of Albany

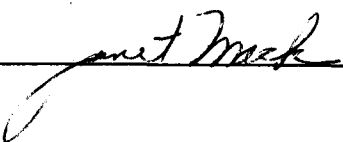
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of October, 1977, he served the within
Notice of Decision by (certified) mail upon Geoffery Sitomer and
Behera Sitomer (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. and Mrs. Geoffery Sitomer
10 Tree Hollow Lane
Dix Hills, New York 11746

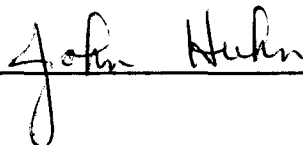
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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
~~XXXXXX~~ last known address of the (~~representative of the~~) petitioner.

Sworn to before me this

3rd day of October, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GEOFFERY SITOMER and BEHERA SITOMER:

AFFIDAVIT OF MAILING

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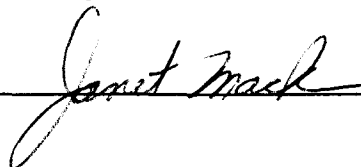
State of New York
County of Albany

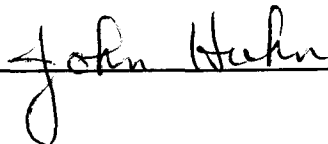
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of October, 1977, she served the within
Notice of Decision by (certified) mail upon Charles R. Pegler,
CPA (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Charles R. Pegler, CPA
c/o Pegler & Pegler, CPA's
525 Northern Boulevard
Great Neck, New York 11021
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

3rd day of October, 1977.







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

October 3, 1977

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

Mr. and Mrs. Geoffery Sitomer
10 Tree Hollow Lane
Dix Hills, New York 11746

Dear Mr. and Mrs. Sitomer:

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(s) **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 :

GEOFFERY SITOMER and BEHERA SITOMER

DECISION

for Redetermination of a Deficiency or for:
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years
1972 and 1973. :

Petitioners, Geoffrey Sitomer and Behera Sitomer, residing at 10 Tree Hollow Lane, Dix Hills, New York 11746, 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 1972 and 1973 (File No. 13417).

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 27, 1977 at 9:15 A.M. The petitioners appeared by Charles R. Pegler, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the income received by petitioner Geoffrey Sitomer during the years 1972 and 1973, in connection with his sales

activities on behalf of Customer Brokerage Service Corp. and Florida Produce Brokers, Inc., was subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Geoffrey Sitomer and Behera Sitomer, filed New York State resident income tax returns for the years 1972 and 1973. Petitioner Geoffrey Sitomer did not file unincorporated business tax returns for said years.

2. On April 11, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioners in the amount of \$2,045.56. The Notice of Deficiency provided that if both husband and wife signed the consent to findings on the deficiency, the overpayment due on petitioners' 1973 New York return of \$928.15, plus accumulated interest of \$68.84, would be applied against the deficiency of \$2,045.56, thereby leaving a balance due of \$1,048.57. The deficiency was issued on the grounds that the income received by petitioner Geoffrey Sitomer from Customer Brokerage Service Corp. and Florida Produce Brokers, Inc., during the years 1972 and 1973 was subject to the unincorporated business tax.

3. Petitioner Geoffrey Sitomer was employed on a salary basis by George Tiefer, Inc., as a general manager during the years 1972

and 1973. Said firm was a buyer and distributor of produce and food product lines.

4. During the years 1972 and 1973 petitioner Geoffrey Sitomer recommended non-competitive produce or food product lines of Customer Brokerage Service Corp. and Florida Produce Brokers, Inc., to customers of George Tiefer, Inc., and to other contacts he made in connection with his employment with George Tiefer, Inc. He received commissions from Customer Brokerage Service Corp. and from Florida Produce Brokers, Inc., based on sales arising from his recommendations.

5. During the years 1972 and 1973, petitioner Geoffrey Sitomer received commission income totalling \$21,000.00 and \$32,000.00, respectively, from Brokerage Service Corp. and Florida Produce Brokers, Inc., which he contended were commissions from referrals of customers to the aforesaid firms. The aforesaid firms did not deduct Federal or New York State withholding taxes or social security taxes, nor was petitioner under their direction and control.

CONCLUSIONS OF LAW

A. That the income received by petitioner Geoffrey Sitomer during the years 1972 and 1973 from Customer Brokerage Service Corp. and Florida Produce Brokers, Inc., constituted receipts from his regular business as a sales representative.

B. That the activities of petitioner Geoffrey Sitomer in connection with Customer Brokerage Service Corp. and Florida Produce Brokers, Inc., constitute the carrying on of an unincorporated business, and that his income derived therefrom is subject to the unincorporated business tax in accordance with section 703 of the Tax Law.

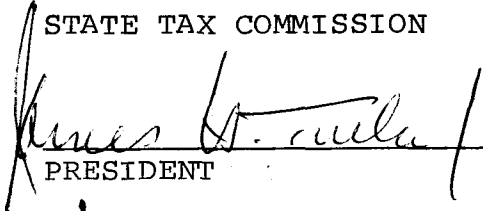
C. That petitioner Behera Sitomer was not engaged in an unincorporated business during the years in question.


D. That the petition of Geoffrey and Behera Sitomer is granted to the extent that the deficiency asserted against petitioner Behera Sitomer is cancelled; that except as so modified the petition is in all other respects denied and the Notice of Deficiency issued April 11, 1975 is sustained.

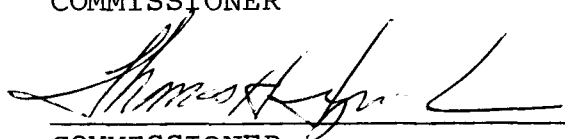
DATED: Albany, New York

October 3, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER