

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HENRY SMITH

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

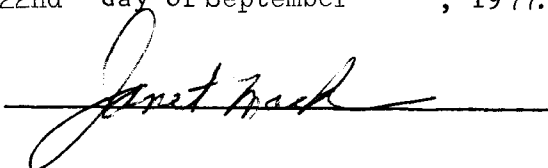
State of New York
County of Albany

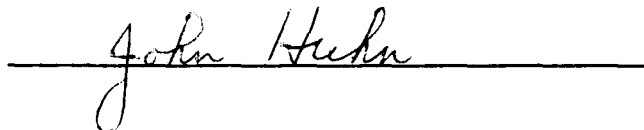
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of September , 1977 , he served the within
Notice of Decision by (certified) mail upon Albert L. Hecht,
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Albert L. Hecht
256-258 Main Mall
Poughkeepsie, New York 12601
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

22nd day of September , 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY SMITH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (6) 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 22nd day of September, 1977, He served the within

Notice of Decision by (certified) mail upon Henry Smith

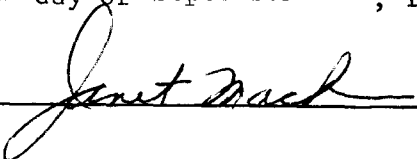
~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Henry Smith
14 Colden Hill Road
Newburgh, New York 12550

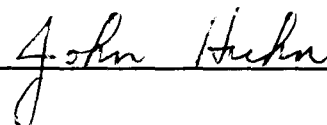
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXXXXXXXX~~
~~XXXXXX~~ of the) petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

22nd day of September, 1977.







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

September 22, 1977

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

Henry Smith
14 Colden Hill Road
Newburgh, New York 12550

Dear Mr. Smith:

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 **(g) 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 CHYRYWATT
HEARING EXAMINER

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HENRY SMITH	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1969 and 1970.	:	

Petitioner, Henry Smith, residing at 14 Colden Hill Road, Newburgh, New York 12550, 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 1969 and 1970 (File No. 00227).

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 May 26, 1977 at 2:45 P.M. The petitioner appeared by Albert L. Hecht, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Lawrence Stevens, Esq., of counsel).

ISSUE

Whether the activities performed by the petitioner, Henry Smith, as a farrier, constituted the practice of a profession within the meaning and intent of section 703(c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Henry Smith, filed New York State resident income tax returns for the years 1969 and 1970. He did not file New York State unincorporated business tax returns for said years.

2. On June 24, 1974, the Income Tax Bureau issued a Notice of Deficiency against the petitioner on the ground that his activities as a farrier during the years 1969 and 1970 constituted the carrying on of an unincorporated business. The Bureau also imposed penalties in accordance with sections 685(a)(1) and 685(a)(2) of the Tax Law.

3. Petitioner was a farrier during the years 1969 and 1970. His income was derived from the shoeing and treatment of the hooves of standardbred horses. He was hired by various horse owners or trainers for the cutting, rasping and nailing of horses' hooves, and in some instances for the treatment and prevention of hoof conditions that might otherwise render a horse valueless. He has vast experience and knowledge of the leg and foot structure of horses and its effect on nearby muscles and tendons.

4. Petitioner does not possess a degree. However, he served as an apprentice farrier for approximately three years, has been a farrier since 1957 and is licensed as a farrier by the New York State Racing Association.

5. Petitioner did not employ any assistants and capital was not a material income producing factor.

CONCLUSIONS OF LAW

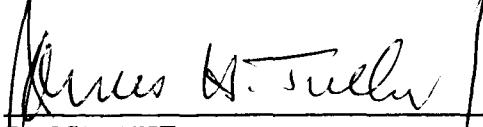
A. That the petitioner's activities as a farrier during the years 1969 and 1970, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law.

B. That the activities of the petitioner during the years 1969 and 1970 constitute the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law, and that his income derived therefrom is subject to the unincorporated business tax.

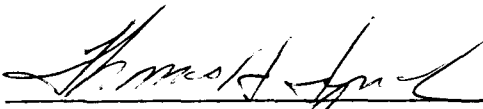
C. That the petition of Henry Smith is denied and the Notice of Deficiency issued on June 24, 1974 in the sum of \$1,545.03 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York
September 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER