

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES H. SMITH AND DOROTHY 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 ~~(XXXXXX)~~ :
1970

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 7 day of December , 19 77, she served the within

Notice of Decision by (certified) mail upon James H. Smith
and Dorothy Smith

~~(XXXXXX)~~ the petitioner in the within proceeding,

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

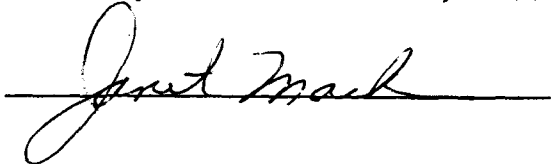
as follows: Mr. and Mrs. James H. Smith
24 Bingham Circle
Manhasset, New York 11030

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 ~~(XXXXXX)~~
~~(XXXXXX)~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~(XXXXXX)~~ petitioner.

Sworn to before me this

7 day of December , 1977





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JAMES H. SMITH AND DOROTHY 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 (8) 23 of the :
Tax Law for the Year (~~xxxxxx~~ ~~xxxxxx~~ ~~xxxxxx~~) :
1970

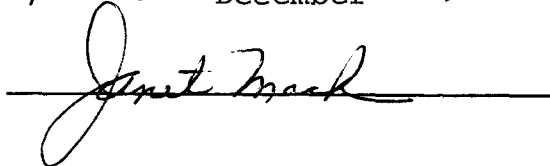
State of New York
County of Albany

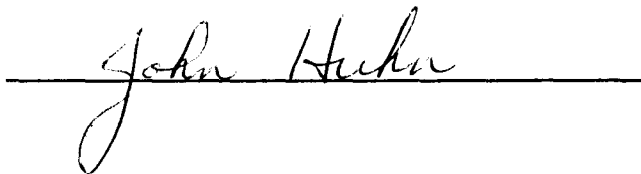
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 7 day of December, 1977, she served the within
Notice of Decision by (certified) mail upon Mervin J. Pelton,
CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mervin J. Pelton, CPA
570 7th 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

7 day of December, 1977.







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

December 7, 1977

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

**Mr. and Mrs. James H. Smith
14 Bingham Circle
Mahassett, New York 11030**

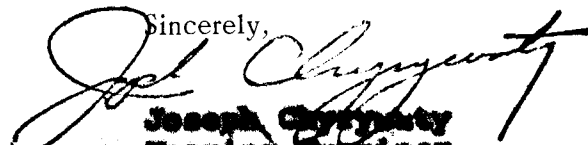
Dear Mr. and Mrs. Smith:

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 **(a) 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 Chynoweth
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JAMES H. SMITH and DOROTHY SMITH : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Year 1970. :
:

Petitioner, James H. Smith and Dorothy Smith, residing at 24 Bingham Circle, Manhasset, New York 11030, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1970 (File No. 13420).

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 September 16, 1976 at 10:45 A.M. Petitioner James H. Smith appeared pro se and for petitioner Dorothy Smith, his wife, and by Mervin J. Pelton, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin A. Levy, Esq., of counsel).

ISSUE

Whether the selling activities of petitioner James H. Smith during the year 1970 constituted services as an employee or the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioners, James H. Smith and Dorothy Smith filed a New York State resident income tax return for the year 1970. Petitioner Dorothy Smith was not engaged in any unincorporated business during the year 1970. Petitioner James H. Smith did not file a New York State unincorporated business tax return for said year.

2. On November 17, 1972, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, James H. Smith and Dorothy Smith, imposing unincorporated business tax upon the income received by petitioner James H. Smith from his activities as a sales representative during the year 1970. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,131.05, including interest.

3. During the year 1970, petitioner James H. Smith was employed on a salary basis by Smith-Weihman Co., Inc. as a sales representative. He also received salary income from Swoco Inc. and J.H. Redding Co. These three firms were all affiliated. Each of the firms withheld Federal and state income taxes and social security taxes from petitioner's salary. Said firms did not have any "employee plans" such as health or pension plans. The petitioner worked at least forty hours a week for the three affiliated employers and was reimbursed for business expenses.

4. Petitioner James H. Smith also received fees in 1970 of \$1,677.00 from F.W. Steadman Inc. and \$480.00 from Mosler, Piccirillo & Smith Inc. for providing these firms with leads to potential customers.

5. During 1970, petitioner James H. Smith formed a corporation known as S. and S. Chemical, Inc., in order to handle the operation of a distributorship he was able to obtain from Standard Oil of California. Petitioner had a fifty percent ownership in said corporation, from which he received income of \$11,700.00 in 1970 in the form of commissions. Petitioner worked for this corporation after normal working hours and on weekends.

CONCLUSIONS OF LAW

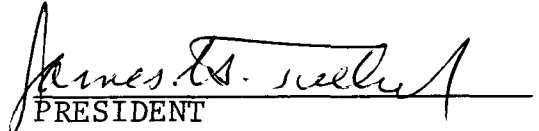
A. That petitioner James H. Smith's activities on behalf of Smith-Weihman Co. and its affiliated firms, and on behalf of S. and S. Chemical, Inc. during the year 1970, constituted services as an employee within the meaning and intent of section 703(b) of the Tax Law. Therefore, the income he received from said firms during the year 1970 is not subject to unincorporated business tax.

B. That the fees received by petitioner James H. Smith in 1970 from F.W. Steadman Inc. and Mosler, Piccirillo & Smith Inc. constituted income from his regular sales business which is subject to unincorporated business tax. However, the business income he received from said principals in 1970 was insufficient to result in an unincorporated business tax liability.

C. That the petition of James H. Smith and Dorothy Smith is granted and the Notice of Deficiency issued April 13, 1973 is cancelled.

DATED: Albany, New York
December 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER