

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GILBERT J. CORRIS

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)~~ ~~XXXXXXX~~ 1971:

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 22 day of March, 19 78, He served the within

Notice of Decision by (certified) mail upon Gilbert J. Corris

~~XXXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Gilbert J. Corris
as follows: 57 Edgewood Avenue
Rochester, New York 14618

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

Sworn to before me this

22 day of March, 19 78

Janet Mack

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GILBERT J. CORRIS

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)~~ 1971 :

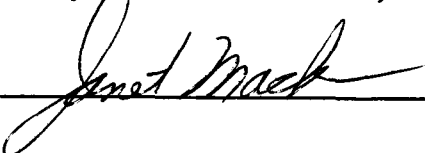
State of New York
County of Albany

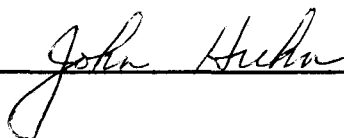
John Huhn , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22 day of March , 19 78, he served the within
Notice of Decision by (certified) mail upon Harvey G. Levy, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harvey G. Levy, CPA
606 Executive Office Bldg.
Rochester, New York 14614
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

22 day of March , 19 78







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

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

March 22, 1978

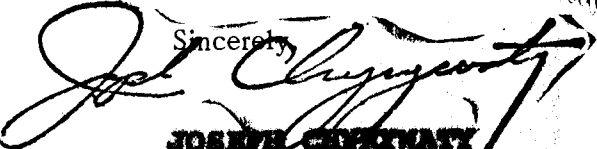
**Gilbert J. Corris
57 Edgewood Avenue
Rochester, New York 14618**

Dear Mr. Corris:

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 **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 C. CONWAY
HEARING EXAMINER**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
GILBERT J. CORRIS : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Year 1971. :
:

Petitioner, Gilbert J. Corris, 57 Edgewood Avenue, Rochester, New York 14618, 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 1971 (File No. 13131).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 11, 1977 at 10:45 A.M. Petitioner appeared by Harvey G. Levy, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUES

I. Whether petitioner's activities during the year 1971 as a manufacturers' representative constituted the carrying on of an unincorporated business.

II. Whether penalties pursuant to sections 685(a)(1) and (2) of the Tax Law were properly asserted against petitioner by the Income Tax Bureau.

FINDINGS OF FACT

1. Petitioner timely filed a New York State personal income tax return for the year 1971, on which he reported income derived from his activities as a manufacturers' representative as business income. He did not file an unincorporated business tax return for said year.

2. The Income Tax Bureau contended that petitioner's selling activities constituted the carrying on of an unincorporated business. A Notice of Deficiency was issued July 29, 1974 in the amount of \$470.80 in unincorporated business tax, plus \$64.64 in interest and \$171.84 in penalties pursuant to sections 685(a)(1) and (2) of the Tax Law, for a total due of \$707.28.

3. Petitioner stated that he now agrees that his activities during 1971 constituted the carrying on of an unincorporated business. He relied on the advice of his accountant in not filing an unincorporated business tax return for said year.

CONCLUSIONS OF LAW

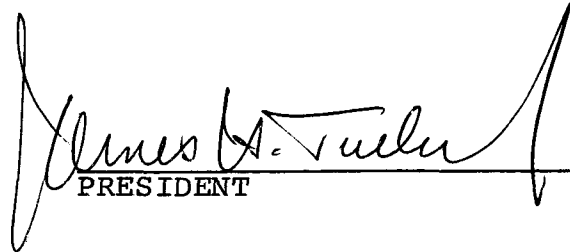
A. That petitioner, Gilbert J. Corris, was engaged in the carrying on of an unincorporated business during the year 1971 in accordance with the meaning and intent of section 703 of the Tax Law; thus, the income derived therefrom was subject to unincorporated business tax.

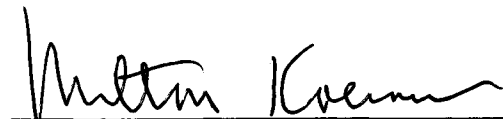
B. That petitioner had reasonable cause for his failure to file an unincorporated business tax return for 1971. Therefore, the penalties asserted against him (pursuant to sections 685(a) (1) and (2) of the Tax Law) for said year are cancelled. The Income Tax Bureau is hereby directed to modify the Notice of Deficiency issued July 29, 1974. Except as so modified, said Notice is sustained, together with such additional interest as may be lawfully owing.


C. That the petition of Gilbert J. Corris is in all other respects denied.

DATED: Albany, New York
March 22, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER