

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRI D. and DENISE F. DAUMAN

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) ~~XXX~~ Period(s) :
1969 and 1970

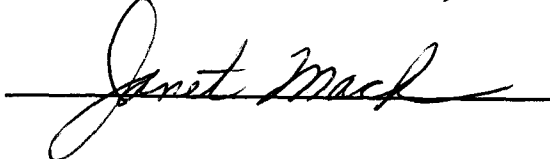
State of New York
County of Albany

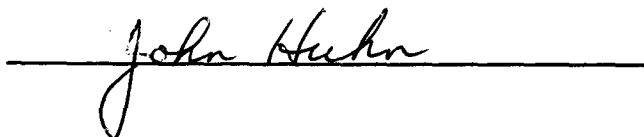
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of February, 1978, he served the within
Notice of Decision by (certified) mail upon Henri D. & Denise F. Dauman
~~X(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Henri D. & Denise F. Dauman
136 East 76th Street
New York, New York 10021
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)~~
~~of the~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~X(representative of the)~~ petitioner.

Sworn to before me this

17th day of February, 1978







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

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

February 17, 1978

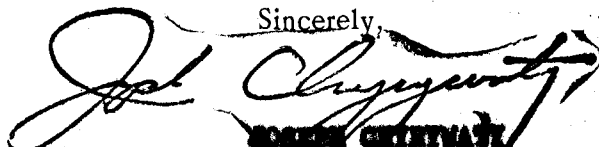
**Henri D. & Denise F. Dunman
136 East 76th Street
New York, New York 10021**

Dear Mr. & Mrs. Dunman:

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 CHIRGWIN
HEARING EXAMINER**

~~XX~~

Taxing Bureau's Representative

THE
FEDERAL BUREAU OF INVESTIGATION
UNITED STATES DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20535

MEMORANDUM

TO : DIRECTOR, FBI

FROM : SAC, NEW YORK

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HENRI D. and DENISE F. DAUMAN	:	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.	:	

Petitioners, Henri D. and Denise F. Dauman, 136 East 76th Street, New York, New York 10021, 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. 13139).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 29, 1977 at 1:15 P.M. Petitioner Henri D. Dauman appeared pro se and by accountant, Mark Sanders. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, of counsel).

ISSUES

I. Whether petitioner Henri D. Dauman's activities as a photo-journalist during the years 1969 and 1970 constituted the practice of a profession within the meaning of section 703(c) of the Tax Law.

II. Whether the income received by petitioner Henri D. Dauman from Cinergy Corp. was subject to unincorporated business tax.

III. Whether petitioner Henri D. Dauman had reasonable cause for his failure to file New York State unincorporated business tax returns for the years 1969 and 1970.

FINDINGS OF FACT

1. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioners, Henri D. and Denise F. Dauman, imposing unincorporated business tax on the income received by Henri D. Dauman from his activities as a photo-journalist for the years 1969 and 1970.

2. During the year 1969 and until July of 1970, the petitioner Henri D. Dauman worked as a free-lance photo-journalist. During July of 1970, petitioner Henri D. Dauman and three other principals formed Cinergy Corp. He became a full-time, salaried employee of Cinergy Corp. on July 1, 1970. For the remainder of 1970, he worked exclusively for that corporation. He received a salary of \$13,000.00 from Cinergy Corp. during 1970. Petitioner Denise Dauman was not employed during 1969 and 1970.

3. Petitioner Henri D. Dauman has been a photographer since the early 1950's. He worked as a photographer for several newspapers during the 1950's and early 1960's. Upon his subsequent attainment of recognition in the field of photography, he worked as a free-lance photographer. Petitioner has no formal education as a photo-journalist. Rather, he was self-taught. His activities as a photo-journalist during 1969 and 1970 (until he became an employee of Cinergy Corp.) included cover photography for magazines such as Newsweek, Time, Life and Fortune. He also created photo essays on various celebrities and personalities.

4. During the years in issue, petitioner Henri D. Dauman was a member of the American Society of Magazine Photographers. He has received numerous awards for his photography.

5. Petitioner Henri D. Dauman's accountants for the years 1969 and 1970 advised him that he was not required to file New York State unincorporated business tax returns for said years.

CONCLUSIONS OF LAW

A. That the Statement of Audit Changes and Notice of Deficiency dated March 31, 1975, should not have been issued against petitioner Denise F. Dauman.

B. That the activities of petitioner Henri D. Dauman as a photo-journalist during the years 1969 and 1970, did not constitute the practice of a profession exempt from the imposition of unincorporated business tax within the meaning and intent of section 703(c) of the Tax Law.

C. That the income received by the petitioner Henri D. Dauman during the year 1970 from Cinergy Corp. in the sum of \$13,000.00, constituted compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

D. That the activities of petitioner Henri D. Dauman during 1969 and through June 30, 1970, at which time he discontinued his business and became an employee, constituted the carrying on of an unincorporated business, and that the income derived therefrom was subject to the unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

E. That petitioner Henri D. Dauman had reasonable cause for his failure to file New York State unincorporated business tax returns for the years 1969 and

1970, therefore, the penalty assessed pursuant to section 685(a)(1) and 685(a)(2) of the Tax Law is waived.

F. That the petition of Henri D. and Denise F. Dauman is granted to the extent of cancelling the Notice of Deficiency dated March 31, 1975, as against petitioner Denise F. Dauman, and of cancelling the penalties imposed pursuant to section 685(a)(1) and 685(a)(2) of the Tax Law; that the net income before salary credit for the year 1970 be reduced from \$26,256.99 to \$13,256.99; that the exemption for the year 1970 be modified to reflect the short tax year of January 1, 1970 through June 30, 1970, and that the recomputed unincorporated business tax deficiency shall be due, together with such interest as may be lawfully owing. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued March 31, 1975 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
February 17, 1978

STATE TAX COMMISSION


PRESIDENT
COMMISSIONER
COMMISSIONER