

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOEL FRIEDMAN

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)~~ :  
1966, 1967, 1968 and 1969.

State of New York  
County of Albany

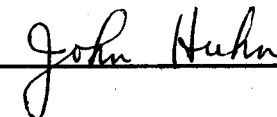
John Huhn, being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 25th day of August, 1978, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Joel Friedman  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Joel Friedman  
300 Edwards Street  
Roslyn Heights, New York 11577  
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

25th day of August, 1978





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOEL FRIEDMAN

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) ~~xx~~ ~~Period(s)~~ :  
1966, 1967, 1968 and 1969.

State of New York  
County of Albany

John Huhn, being duly sworn, deposes and says that  
xhe is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 25th day of August, 1978, xhe served the within  
Notice of Decision by (certified) mail upon Seymour Koppersmith

(representative of) the petitioner in the within proceeding,

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

Seymour Koppersmith, CPA  
37 Cardinal Drive  
East Hills, New York 11576

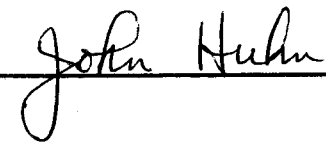
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

25th day of August, 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

**August 25, 1978**

**Mr. Joel Friedman  
300 Edwards Street  
Roslyn Heights, New York 11577**

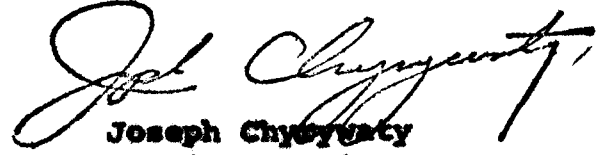
**Dear Mr. Friedman:**

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 **(x) 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 Chyorny  
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JOEL FRIEDMAN : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law for :  
the Years 1966, 1967, 1968 and 1969. :  
:

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Petitioner, Joel Friedman, 300 Edwards Street, Roslyn Heights, New York 11577, 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 1966, 1967, 1968 and 1969 (File No. 00362).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on August 30, 1977 at 10:45 A.M. Petitioner appeared by Seymour Koppersmith, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner's selling activities during the years 1966 through 1969 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Joel Friedman, timely filed New York State personal income tax returns for the years 1966 through 1969. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner was engaged in the carrying on of an unincorporated business. Accordingly, it issued a Notice of Deficiency on August 30, 1971 in the amount of \$1,832.32 in unincorporated business tax, plus \$512.71 in penalty (pursuant to section 685(a) of the Tax Law for 1966 through 1968 and section 685(a)(1) and 685(a)(2) for 1969) and \$239.93 in interest, for a total due of \$2,584.96.

3. Petitioner represented from three to five principals as a furniture salesman on a commission basis during the years 1966 through 1969. He sold to retail stores in the greater Metropolitan New York area, including part of New Jersey.

4. Petitioner's primary principal was aware that he carried other lines and instructed him to refrain from doing so. Because of this, petitioner was forced to give up his second largest principal in 1969, but continued to sell for other principals besides his primary principal.

5. Petitioner maintained an office in his home. He was not assigned office space or reimbursed for expenses by any principal. He filed a Federal Schedule "C", reporting his commission income and claiming the selling expenses he incurred as deductions.

6. Petitioner's principals restricted his territory, but he was free to use his own methods and set up his own schedules. There was no agreement between the principals as to the division of his time. They exercised little control over petitioner and were interested only in the results of his efforts.

7. There was no withholding of income or social security taxes from petitioner's compensation by any principal. He was not provided with any fringe benefits and he financed his own retirement plan.

8. Petitioner did not file unincorporated business tax returns for the years 1966 through 1969, on the advice of his accountant.

#### CONCLUSIONS OF LAW

A. That the selling activities of petitioner, Joel Friedman, during the years 1966 through 1969 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.

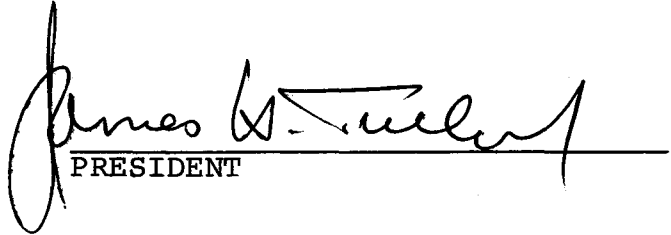
B. That petitioner's failure to file unincorporated business tax returns for the years at issue was due to reasonable cause and not due to willful neglect.

C. That the petition of Joel Friedman is granted only to the extent of cancelling the penalties asserted pursuant to section 685(a) of the Tax Law for 1966 through 1968 and pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for 1969. The

Income Tax Bureau is hereby directed to so modify the Notice of Deficiency issued August 30, 1971 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
August 25, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER