

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GENERAL STUDIOS

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) or Period(s)
February 28, 1969 through December 31, 1969

State of New York
County of Albany

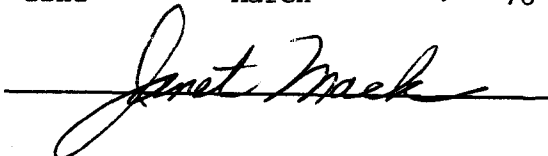
John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 22nd day of March, 1978, he served the within
Decision by (certified) mail upon General Studios

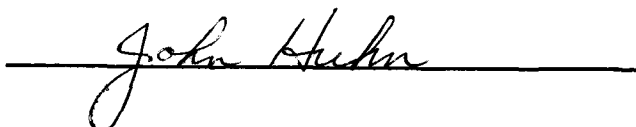
~~XXXXXXXXXXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: General Studios
c/o Manning Begler
570-7th Avenue
New York, NY 10018
and by depositing same enclosed in a postpaid properly addressed wrapper 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 ~~XXXXXXXXXXXXXXXXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

22nd day of March, 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

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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 March, 1978, he served the within
Decision by (certified) mail upon Manning Begler

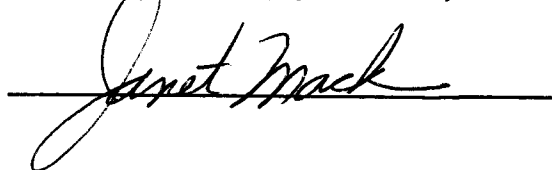
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Manning Begler
570-7th Avenue
New York, NY 10018

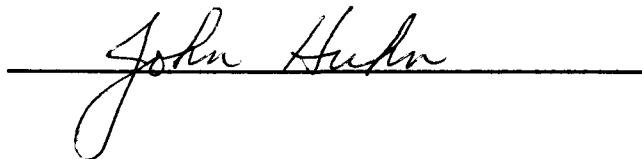
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

22nd day of March, 1978







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

March 22, 1978

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

**General Studies
c/o Manning Begler
570-7th Avenue
New York, NY 10018**

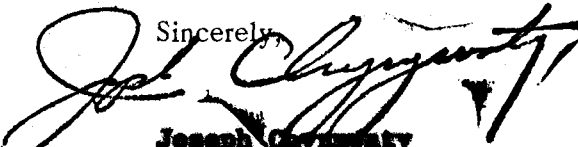
Gentlemen:

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 Chynoweth
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

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 13, 1976 at 2:45 P.M. The petitioner appeared by Manning Begler, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

Whether petitioner was subject to unincorporated business tax for the fiscal year ended February 28, 1969 and for the short period ended December 31, 1969.

FINDINGS OF FACT

1. Petitioner, General Studios, timely filed a claim for refund of unincorporated business tax paid for the fiscal year ended February 28, 1969 and for the short period ended December 31, 1969.

2. Max Klein, Bertha Silverstein and Charlotte Singer each owned undivided interests in a five story brick tenement building located at 202 West 81st Street, New York City, in the following proportions:

Max Klein	-	50%
Bertha Silverstein	-	25%
Charlotte Singer	-	25%

The aforesaid owners operated the building as an apartment and rooming house under the name "General Studios".

3. The tenement building contained fifty rental units consisting of single rooms, with the exception of one, two and one-half room apartment on each floor. All the rental units contained beds, chests of drawers, lamps, rugs, chairs, gas ranges and refrigerators. The two and one-half room apartments each had a full size kitchen, bedroom and bathroom. Communal bathroom facilities were provided for the one-room apartments. Heat, electricity, water, linens and cleaning services were furnished to all tenants, The cleaning services were performed by hired help.

4. The tenement building did not contain a public lobby, elevator or telephone switchboard, nor was a desk clerk employed. A coin-operated telephone was located on each floor. The tenants occupying the two and one-half room apartments had their own private telephones.

5. There were no bills issued for the collection of rents. The tenants would pay the superintendent who would then issue a receipt. The rents collected would then be picked up by one of the owners. None of the owners lived on the premises.

6. Petitioner maintained that the apartments were under "Rent Control" and that all of the rental units were subject to two-year leases.

7. On May 11, 1966, the property was sold and the profit was reported on the installment basis. New York State partnership returns were filed for each year on a fiscal year basis ending February 28 and the unincorporated business tax was computed and paid. A final New York State partnership return was also filed for the short period ended December 31, 1969, at which time the unincorporated business tax was computed and paid.

8. Petitioner contended that the unincorporated business tax paid for the fiscal year ended February 28, 1969 in the sum of \$1,176.85, and for the short period ended December 31, 1969 in the sum of \$158.50, was paid in error.

9. The rental income of the units was derived primarily from permanent tenants. The petitioner contended that the permanent status of the tenants was supported by a rentbook which showed the length of stay of each tenant. Petitioner also contended that the book was submitted to the Income Tax Bureau at a conference held on October 30, 1973, but was never returned.

CONCLUSIONS OF LAW

A. That General Studios was not engaged in an unincorporated business within the meaning and intent of section 703(a) of the Tax Law (see section 703(e)) and, therefore, is not subject to unincorporated business tax under section 701(a) of said Law.

B. That the petition of General Studios is granted. The Income Tax Bureau is hereby directed to refund the sum of \$1,176.85 for the fiscal year ending February 28, 1969 and the sum of \$158.50 for the short period ended December 31, 1969, together with such interest as may be lawfully owing.

DATED: Albany, New York
March 22, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER