

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SEYMOUR HACKER

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) ~~xxPeriod(s)~~ :
1968, 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 13 day of September , 1978 , he served the within
Notice of Decision by (certified) mail upon Seymour Hacker

(~~representative of~~) the petitioner in the within proceeding,

By enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Seymour Hacker
54 West 57th Street
New York, NY

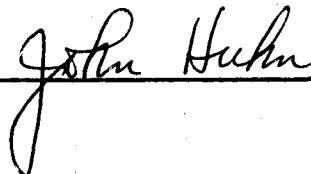
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~xxthe~~) 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

13 day of September , 1978.





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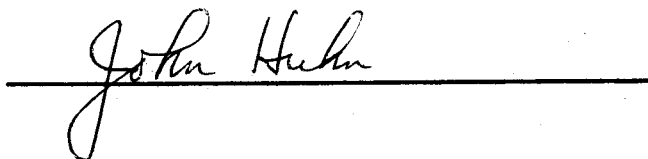
John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13 day of September, 1978, she served the within
Notice of Decision by (certified) mail upon David Ehrlich, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: David Ehrlich, CPA
380 Madison Ave.
New York, NY 10019
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

13 day of September, 1978







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

September 13, 1978

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

**Seymour Hasker
54 West 57th Street
New York, NY**

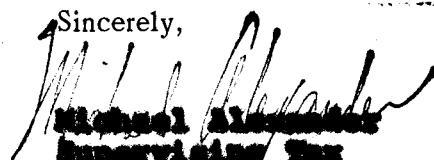
Dear Mr. Hasker:

Please take notice of the **Determination**
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,


**Michael Alexander
Supervising Tax
Hearing Officer**

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SEYMOUR HACKER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968, 1969 and 1970.	:	

Petitioner, Seymour Hacker, 54 West 57th Street, New York, New York, 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 1968, 1969 and 1970 (File No. 14215).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 19, 1977. Petitioner appeared by David Ehrlich, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Laurence Stevens, Esq., of counsel).

ISSUES

I. Whether petitioner maintained regular places of business outside New York State and if so, whether he was permitted to allocate a portion of the excess of his unincorporated business gross income over his unincorporated business deductions for unincorporated business tax purposes.

II. Whether petitioner was entitled to deduct additional amounts for contributions for unincorporated business tax purposes for 1968 and 1969, as well as five percent of his total business income for 1970.

III. Whether the Notice of Deficiency of unincorporated business tax due against Seymour and Ruth Hacker for 1968 was issued within the statutory period of limitations.

FINDINGS OF FACT

1. Petitioner, Seymour Hacker, and his wife filed New York State resident income tax returns for the years 1968, 1969 and 1970, on which business income was reported in the amounts of \$44,741.00, \$73,128.00 and \$63,822.00, respectively. Petitioner also filed New York State unincorporated business tax returns for said years, on which he reported net profit from business of \$21,079.00 for 1968, \$20,907.00 for 1969 and \$21,028.00 for 1970. Petitioner did not attach any allocation schedules or statements to the unincorporated business tax returns for the years at issue which would indicate that an allocation of business income was being claimed for said years.

2. On October 16, 1972, the Income Tax Bureau issued a Statement of Audit Changes against Seymour and Ruth Hacker. In it, the Bureau proposed various adjustments to petitioner's personal income tax liabilities and unincorporated business tax liabilities for the years 1968, 1969 and 1970, on the basis of information available to the Bureau and/or information available

with respect to Federal audit adjustments for said years. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued against Seymour and Ruth Hacker on December 23, 1974 in the amount of \$11,234.28, plus interest of \$2,775.20, for a total of \$14,009.48. The Notice of Deficiency also contained a typewritten notation that a previous remittance in the amount of \$4,575.45 had been applied against both the personal income tax and interest due, and that the balance still due was \$9,434.03. Petitioner timely filed a petition for redetermination of said deficiency.

3. During the years in issue, Ruth Hacker was not engaged in any unincorporated business activity.

4. Petitioner, Seymour Hacker, is not contesting the adjustments proposed by the Income Tax Bureau for 1968, 1969 and 1970 personal income tax purposes. Therefore, said adjustments are not at issue.

5. Petitioner filed forms IT-75 for the years 1969 and 1970 with the Income Tax Bureau, thereby consenting to the extension of the period of limitation upon assessment of personal income and unincorporated business taxes for said years.

6. During the years in issue, petitioner, Seymour Hacker, operated an unincorporated business in New York City under the name of "Seymour Hacker a/k/a Hacker Books." Petitioner's stationery listed a New York office address and telephone number, but no office address or telephone number was listed outside

New York State. Petitioner did not file a certificate-of-doing-business in any state other than New York State and he did not pay a tax on income earned in any state other than New York State.

7. A portion of petitioner's business, as well as income derived therefrom during the years in issue, was derived from petitioner's sales of books in New York. Another portion of his business and of the income derived therefrom during said years was realized through the sale of books in states other than New York State. These sales were made from vans or "bookmobiles" by commission salesmen, hired by petitioner to operate said bookmobiles and to sell books outside New York State to educational institutions, libraries and museums. Although petitioner owned these bookmobiles and licensed them in New York State, they were operated entirely outside New York State.

8. Petitioner also received income during the years in issue in the form of fees from other book companies for space in the bookmobiles which was used to store and display their books, which the salesmen/operators then sold for the other book companies.

9. Petitioner contended that the business income he received from the operation of the bookmobiles was segregated from the business income which he received from his sales in New York. He further contended that although the bookmobiles were mobile units which traveled throughout the United States, each bookmobile constituted a separate sales office which was maintained and operated entirely outside New York State.

Accordingly, he argued that the business income derived from the operation of the bookmobiles was not taxable for New York State unincorporated business tax purposes, as it was not derived from New York sources.

10. Each bookmobile was equipped with an office desk, filing cabinets, a typewriter, fluorescent lights and bookshelves where books were displayed. Each bookmobile was considered by petitioner to be a separate operation, as each had its own book inventory, billing operation and records. Each salesman/operator was considered by petitioner to be an independent contractor who determined his own sales route and itinerary, without any control or supervision of petitioner. Each was remunerated on a commission basis only (based on a percentage of sales), and petitioner did not deduct withholding taxes from such remuneration. In many instances, each salesman sold the books of other principals (as well as those of petitioner) from the bookmobile. Each salesman made most of his book sales directly from the bookmobile and he frequently received payment at the time of sale. In other instances, orders were sent to petitioner's New York office and shipped from New York. The salesmen/operators of the bookmobiles did not enter New York State for sales, but did come to petitioner's New York office once or twice a year for sales conferences. When the bookmobiles were not used for selling, they were garaged by the salesman/operator in his home state.

11. Although the salesmen used petitioner's letterheads for stationery, petitioner contended that they maintained their own offices where they conducted business in their home state, when not on the road conducting business from the bookmobiles. No promotional advertising for the bookmobile operation was done from the New York office.

12. The monies which the salesmen/operators collected from sales made outside New York State were sent to petitioner's New York office and deposited in the firm's New York checking account. Sales made by the salesmen/operators were not subject to petitioner's approval. In order to replenish the inventories of the bookmobiles, petitioner shipped new inventories to the salesmen/operators every six weeks by pre-arrangement with post offices that were on the routes they traveled. Although the salesmen/operators traveled their routes approximately ten months a year, there was no address where they could be reached by petitioner or by customers, and there were no telephones in the bookmobiles. While they were traveling, petitioner's contact with the salesmen/operators consisted of weekly calls which they made.

13. Although petitioner contended in his petition that he was entitled to additional charitable contribution deductions for 1968 and 1969 for unincorporated business tax purposes, as well as a charitable contribution deduction for 1970 unincorporated business tax purposes in 1970 equal to five percent of his total income from business, he did not present any documentary or other evidence to support his contention.

CONCLUSIONS OF LAW

A. That Ruth Hacker was not engaged in an unincorporated business during the years 1968, 1969 and 1970. Therefore, the Income Tax Bureau is instructed to delete her name from the Notice of Deficiency issued December 23, 1974.

B. That petitioner, Seymour Hacker, maintained a regular place of business within New York State, but did not maintain a regular place of business outside New York State during the years 1968, 1969 and 1970. Petitioner's bookmobiles were operated by independent contractors and did not constitute regular places of business outside New York State, within the meaning and intent of section 707 of the Tax Law and former regulation section 20 NYCRR 287.1 (nor would they under the present regulation section 20 NYCRR 207.2). Accordingly, the business income petitioner received during the years in issue cannot be allocated and the business income derived from the operation of the bookmobiles is subject to unincorporated business tax.

C. That petitioner has not sustained the burden of proof required to show that he was entitled to additional deductions for charitable contributions for 1968 or 1969 or for a charitable contribution deduction for 1970 within the meaning and intent of section 706(1) of the Tax Law.

D. That petitioner omitted from the unincorporated business gross income shown on his 1968 New York State unincorporated business tax return, an amount in excess of twenty-five percent of the amount required to be shown thereon. Therefore, the

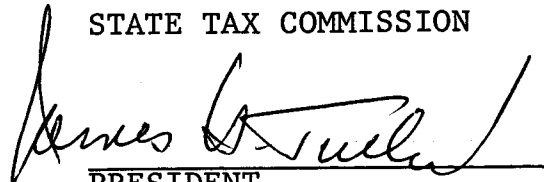
Notice of Deficiency of unincorporated business tax for the year 1968 was timely issued in accordance with the provisions of section 683(d) of the Tax Law.

E. That the Income tax Bureau is instructed to modify the Notice of Deficiency issued December 23, 1974 in accordance with Conclusion of Law "A," above, and to reduce the amount of the deficiency by the remittance of \$4,575.45.

F. That except as modified above, the petition of Seymour Hacker is denied and the Notice of Deficiency is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
September 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER