

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

THEODORE HEIDE

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(x)~~ :
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 17th day of February , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Theodore Heide

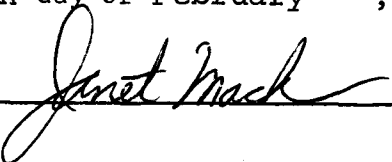
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Theodore Heide
739 West 186th Street
New York, New York 10033

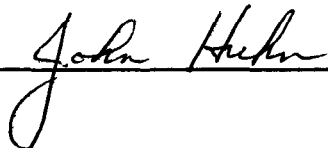
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~
~~xxx~~) petitioner herein and that the address set forth on said wrapper is the
last known address of the (~~representative of~~) 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

**Mr. Theodore Heide
739 West 186th Street
New York, New York 10033**

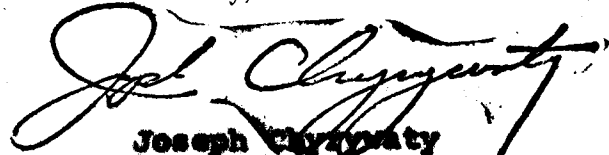
Dear Mr. Heide:

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 **(b) 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 Chyzywaty
Hearing Examiner**

cc: ~~Rechnungsbureau~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
THEODORE HEIDE	:	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, Theodore Heide, residing at 739 West 186th Street, New York, New York 10033, 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. 00282).

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 May 25, 1977 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner's activities as a salesman during the years 1968, 1969 and 1970 constituted the carrying on of an unincorporated business and if so, whether the income derived therefrom was subject to unincorporated business and if so, whether the income derived therefrom was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Theodore Heide, filed New York State income tax resident returns for the years 1968, 1969 and 1970. He did not file unincorporated business tax returns for said years.

2. On August 18, 1973, the Income Tax Bureau issued a Revised Statement of Audit Changes against petitioner, on the grounds that income derived from his activities as a manufacturer's representative during the years 1968 through 1970 was subject to unincorporated business tax.

3. Petitioner, Theodore Heide, sold artist's supplies on a commission basis for three non-competing firms during the years 1968 through 1970. He covered the same territory and visited the same customers for each of his three principals. He telephoned his principals each day and appeared at their place of business once a week.

4. There was no agreement between petitioner's principals as to the division of his time and efforts. Petitioner determined his own schedule of appointments. There were no written contracts and petitioner was free to sell for other principals. None of his principals withheld taxes or social security from his compensation, nor did his principals provide him with any employee benefits.

5. Petitioner was not provided with office space by his principals. He had an office in his home where he occasionally met with customers. Petitioner deducted his expenses on Federal Schedule "C".

CONCLUSIONS OF LAW


A. That petitioner, Theodore Heide's activities as a salesman during the years 1968, 1969 and 1970 constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law, and that the income derived therefrom was subject to unincorporated business tax.

B. That the petition of Theodore Heide is denied and the Notice of Deficiency issued September 7, 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
February 17, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER