

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL HERSH

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)~~ :  
1969, 1970 and 1971.

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 31st day of March , 1978, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Samuel Hersh  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Samuel Hersh  
86 West 12th Street  
New York, New York 10011

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 (~~representative of the~~) petitioner.

Sworn to before me this

31st day of March , 1978

*[Signature]*

*John Huhn*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL HERSH

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)~~ :  
1969, 1970 and 1971.

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 31st day of March, 1978, he served the within  
Notice of Decision by (certified) mail upon Ralph Steinman

(representative of) the petitioner in the within proceeding,

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

as follows: Ralph Steinman, CPA  
270 Madison Avenue  
New York, New York 10016

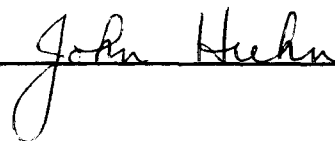
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

31st day of March, 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

**March 31, 1978**

**Mr. Samuel Hersh  
86 West 12th Street  
New York, New York 10011**

**Dear Mr. Hersh:**

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 Chyrywat  
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	:	
	:	
SAMUEL HERSH	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1969, 1970 and 1971.	:	

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Petitioner, Samuel Hersh, residing at 86 West 12th Street, New York, New York 10011, 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, 1970 and 1971 (File No. 11559).

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 24, 1977 at 10:45 A.M. Petitioner appeared by Ralph Steinman, CPA. 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 1969, 1970 and 1971 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Samuel Hersh, filed New York State personal income tax returns for the years 1969, 1970 and 1971, on which he stated his occupation to be a salesman. The income derived from his sales activities was reported as wages. No unincorporated business tax returns were filed for the years at issue.

2. The Income Tax Bureau received a copy of Federal Form 4549 (Income Tax Audit Changes) from the Internal Revenue Service, showing the results of an audit of petitioner's 1969 Federal return. The material received from the Internal Revenue Service also included a copy of petitioner's 1969 Federal return, on which he reported his income as business income and his occupation as a manufacturer's representative.

3. On April 12, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, asserting additional personal income tax based on the Federal adjustment. It held that his activities constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax. Accordingly, a Notice of Deficiency was issued against petitioner on April 12, 1974. Petitioner paid the personal income tax due, leaving only the unincorporated business tax at issue.

4. During the years 1969, 1970 and 1971, petitioner represented various manufacturers as a shoe salesman. He sold for four principals in 1969, five principals in 1970 and three principals in 1971. Petitioner was paid on a commission basis. No taxes or social security were withheld from his compensation, nor was he provided with any employee benefits. Petitioner was not reimbursed for most business expenses, but he claimed these expenses as deductions on Federal Schedule "C". He also financed his own retirement plan.

5. The petitioner's principals did not direct his method of operation, but they were concerned with the results of his efforts. There was no agreement with them as to the division of petitioner's time and effort. He scheduled his own appointments and controlled his daily routine.

6. Petitioner maintained an office with a telephone which rang simultaneously at his office and in his home. The office expense was borne by petitioner and partially by one of his principals. Petitioner kept his samples at the office and occasionally met with customers there.

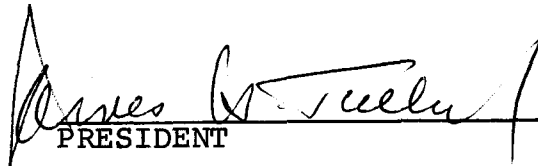
#### CONCLUSIONS OF LAW

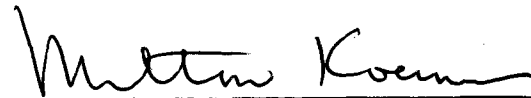
A. That the activities of petitioner, Samuel Hersh, as a shoe salesman during the years 1969, 1970 and 1971, constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law. Therefore, the income derived from these activities was subject to unincorporated business tax.

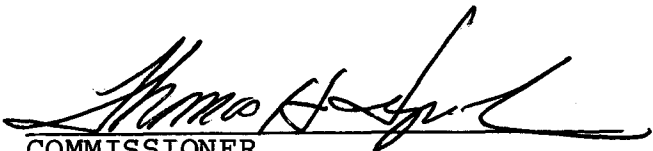
B. That the petition of Samuel Hersh is denied and the Notice of Deficiency issued on April 12, 1974 for \$1,642.05 in unincorporated business tax is sustained, together with such additional penalty and interest as may be lawfully owing.

DATED: Albany, New York  
March 31, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER