

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
THE ESTATE OF GEORGE JACOBS : AFFIDAVIT OF MAILING
(Lina Jacobs, Administratrix)
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~~ ~~xxxx~~ ~~xxxx~~ :
1967 through 1972.

State of New York
County of Albany

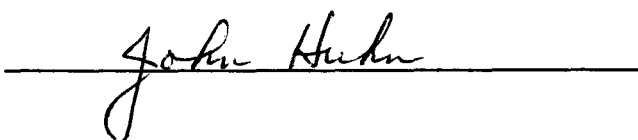
John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon The Estate of George
Jacobs, c/o Lina Jacobs, Administratrix
(~~representative of the~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: The Estate of George Jacobs
c/o Lina Jacobs, Administratrix
11 Stetner Street
Spring Valley, New York 10977
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

24th day of April , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
THE ESTATE OF GEORGE JACOBS : AFFIDAVIT OF MAILING
(Lina Jacobs, Administratrix) :
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)~~ :
1967 through 1972.

State of New York
County of Albany

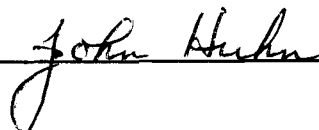
John Huhn , being duly sworn, deposes and says that
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of April , 1978, ~~she~~ served the within
Notice of Decision by (certified) mail upon Alvin Goidel
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alvin Goidel, Esq.
127 John Street
New York, New York 10038
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

24th day of April , 1978

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

April 24, 1978

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

**The Estate of George Jacobs
c/o Lina Jacobs, Administratrix
11 Stetner Street
Spring Valley, New York 10977**

Dear Mrs. Jacobs:

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 Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
THE ESTATE OF GEORGE JACOBS	:	
(Lina Jacobs, Administratrix)	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967 through 1972.	:	

Petitioner, the Estate of George Jacobs, c/o Lina Jacobs, Administratrix, 11 Stetner Street, Spring Valley, New York 10977, 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 1967 through 1972 (File No. 13821).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 27, 1977 at 10:45 A.M. Petitioner appeared by Lina Jacobs, Administratrix, and by Alvin Goidel, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUES

I. Whether the income derived from the activities of George Jacobs as a salesman was subject to unincorporated business tax.

II. Whether the Income Tax Bureau issued a timely Notice of Deficiency against the Estate of George Jacobs.

FINDINGS OF FACT

1. George Jacobs (now deceased) and his wife, Lina Jacobs, filed New York State combined income tax resident returns for the years 1967 through and

including 1972. George Jacobs did not file unincorporated business tax returns for said years.

2. George Jacobs died on December 14, 1972. His wife, Lina Jacobs, was appointed administratrix of his estate on February 8, 1973.

3. Based on a decision issued by the New York State Tax Commission on October 1, 1973 for the year 1965, the Income Tax Bureau issued two notices of deficiency against petitioner, both dated May 20, 1974. Said notices held that income derived from the activities of George Jacobs as a salesman was subject to unincorporated business tax for the years 1967 through 1972.

4. Although petitioner's representative, Alvin Goidel, conceded the unincorporated business tax issue, he contended that the two notices of deficiency were not timely issued against the Estate of George Jacobs, since the Surrogate's Court Procedure Act of the State of New York requires that any claims against the decedent be made within seven months of the date of death. He reasoned that since the deficiencies were issued subsequent to both the seven-month period and the closing of the estate (which he contended took place on September 9, 1973), the deficiencies were not timely and were, therefore, not valid.

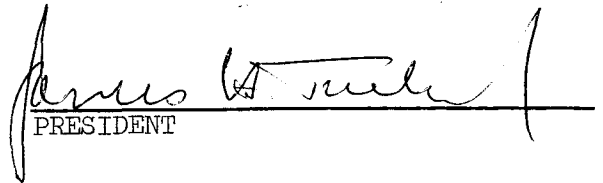
CONCLUSIONS OF LAW

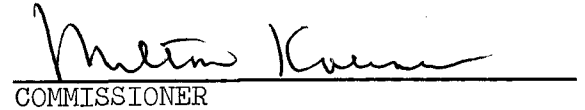
A. That section 1802 of the Surrogate's Court Procedure Act exonerates the fiduciary from personal liability to a claimant for distribution of estate assets where no claim was filed and where the representative had no actual knowledge thereof; it does not bar the validity of a claim (or deficiency) issued against the estate of a decedent. Therefore, the two notices of deficiency dated May 20, 1974 against the Estate of George Jacobs were timely issued, in accordance with section 683(c)(1) of the Tax Law.

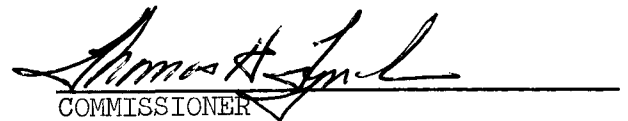
B. That the petition of the Estate of George Jacobs is denied and the notices of deficiency issued May 20, 1974 in the sums of \$788.70 and \$1,458.51 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER