

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ROBERT KATZ

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)~~ :
1971, 1972 and 1973

State of New York
County of Albany

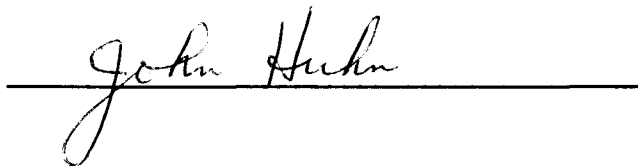
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of October , 1978, ~~she~~ she served the within
Notice of Decision by (certified) mail upon Robert Katz
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert Katz
585 Caledonia Road
Dix Hills, New York 11746
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

13th day of October , 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

October 13, 1978

Robert Katz
585 Caledonia Road
Dix Hills, New York 11746

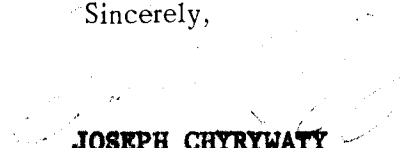
Dear Mr. Katz:

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 ~~(9)~~ **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

~~Taxing Bureau's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT KATZ	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1971, 1972 and 1973.	:	

Petitioner, Robert Katz, 585 Caledonia Road, Dix Hills, New York 11746, 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 1971, 1972 and 1973 (File No. 14855).

A small claims hearing was held before Raymond Siegel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 15, 1977 at 9:30 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether petitioner was engaged in the practice of a profession during 1971, 1972 and 1973.

II. Whether petitioner had reasonable cause for failing to file a New York State unincorporated business tax return for 1971, 1972 and 1973.

III. Whether the statute of limitations on assessment applied to petitioner's non-filing of unincorporated business tax returns for 1971, 1972 and 1973.

FINDINGS OF FACT

1. Petitioner, Robert Katz, and his wife filed New York State income tax resident returns for 1971, 1972 and 1973. He did not file a New York State unincorporated business tax return for any of said years. During said years, he reported as net business income the income that he received from his activities as a management consultant.

2. On February 24, 1976, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert Katz, imposing unincorporated business tax in the sum of \$3,621.22, the income received by him from his business activities during 1971, 1972 and 1973. This sum represented \$1,152.91, \$1,344.91, and \$1,123.40, respectively, for said years. Penalties were imposed under sections 685(a)(1) and 685(a)(2) of the Tax Law in the amount of \$1,450.25 for his failure to file and pay unincorporated business tax for said years. An additional charge was imposed under section 685(c) of the Tax Law for underestimation of tax for 1972 and 1973. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$6,079.35.

3. Petitioner, Robert Katz, attended college, specializing in management courses; however, he did not graduate. He does not hold any college degree nor is a license required in his work.

4. Petitioner's income during 1971, 1972 and 1973 was derived from personal services rendered. Capital was not a material income producing factor.

5. Petitioner failed to submit any documentary or other sufficient evidence to prove the specific nature of his work during said years.

6. Petitioner stated that the additional tax computation appears to be incorrect, but he did not present any evidence to substantiate his claim.

7. Petitioner, Robert Katz, was advised by his accountant that he was not required to file a New York State unincorporated business tax return for 1971, 1972 and 1973.

CONCLUSIONS OF LAW

A. That petitioner, Robert Katz, has failed to prove that his business activities during 1971, 1972 and 1973 constituted the practice of a profession exempt from the imposition of unincorporated business tax, in accordance with the meaning and intent of section 703(c) of the Tax Law.

B. That the income from petitioner's activities during 1971, 1972 and 1973 was subject to unincorporated business tax in accordance with the meaning and intent of sections 701 and 703 of the Tax Law.

C. That petitioner, Robert Katz, had reasonable cause for not filing New York State unincorporated business tax returns for 1971, 1972 and 1973; therefore, the penalty assessed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law is waived.

D. That as petitioner, Robert Katz, did not file unincorporated business tax returns for 1971, 1972 and 1973, the Income Tax Bureau may assess for said tax at any time, without limitation, according to the meaning and intent of section 683(c)(1)(A) of the Tax Law.

E. That the petition of Robert Katz is granted to the extent of cancelling the penalty imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for 1971, 1972 and 1973 in the sum of \$1,450.25. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 24, 1976.


F. That except as so granted, the petition of Robert Katz is in all other respects denied.

DATED: Albany, New York
October 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER