

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEON KITTAY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of **Unincorporated Business**
Taxes under Article ~~23~~ 23 of the
Tax Law for the Year(s) ~~1963, 1964 and 1965~~
1963, 1964 and 1965

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 20 day of September, 1978, he served the within
notice of decision by (certified) mail upon Leon Kittay
~~representative of~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Leon Kittay
3530 Henry Hudson Parkway
Bronx, New York 10463

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

20 day of September, 1978

[Signature]

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEON KITTAY : AFFIDAVIT OF MAILING
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of **Unincorporated Business** :
Taxes under Article(~~2~~) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1963, 1964 and 1965

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 20 day of September , 1978, ~~he~~ served the within
notice of decision by (certified) mail upon Harry Leventhal, CPA

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Harry Leventhal, CPA
36 West 44th Street
New York, New York 10036

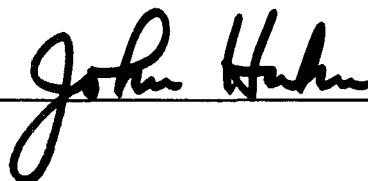
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

20 day of September , 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

September 20, 1978

**Leon Kittay
3530 Henry Hudson Parkway
Bronx, New York 10463**


Dear Mr. Kittay:

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 CHYROWATI
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEON KITTAY	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1963, 1964 and 1965.	:	

Petitioner, Leon Kittay, 3530 Henry Hudson Parkway, Bronx, New York 10463, 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 1963, 1964 and 1965 (File No. 01308).

A small claims hearing was held before Joseph Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 20, 1977 at 1:15 P.M. Petitioner appeared by Harry Leventhal, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner's activities as an employee of a corporation were so interrelated with his unincorporated business, that the income derived therefrom should be included in his unincorporated business income.

FINDINGS OF FACT

1. Petitioner, Leon Kittay, filed unincorporated business income tax returns for the years 1963, 1964 and 1965, on which he reported income generated by his business. He did not include wages he received from Koko Butter and Eggs, Inc. (hereinafter "Koko") on the aforementioned returns.

2. On March 27, 1967, the Income Tax Bureau issued a Notice of Deficiency against petitioner imposing additional unincorporated business tax of \$817.37 for the years 1963, 1964 and 1965, on the grounds that the income received from Koko was interrelated with his other business activities and, therefore, subject to unincorporated business tax.

3. Since 1951 petitioner, Leon Kittay, has owned and operated his own business selling butter, eggs, cheese and other related products to restaurants in Manhattan.

4. In 1962 petitioner and James Kokorelis formed Koko. Leon Kittay was president of the corporation and James Kokorelis was vice-president. Koko sold butter, eggs, cheese and some meat and poultry items to restaurants in Queens, Nassau and Suffolk counties. It operated out of facilities provided by Leon Kittay; however, it did have separate office space in the facility, separate telephone service and it's own part-time bookkeeper. Petitioner testified that items that were sold by both businesses were purchased jointly.

5. On its Federal Corporation Income Tax Return for 1965, Koko claimed a deduction for depreciation on a truck and on refrigeration equipment, and no deduction for rental expense. The unincorporated business tax return filed by Leon Kittay for 1965 included rental expense and depreciation for leasehold and other improvements.

6. Petitioner contended that his duties as president of Koko involved the administration and supervision of its operations, while Mr. Kokorelis was engaged in sales and deliveries. For his services, petitioner received a salary of \$9,100.00 in 1963, \$8,450.00 in 1964 and \$8,050.00 in 1965.

7. Petitioner contended that his activities as an employee of Koko were separate and independent from his own business and that the income derived from Koko should not be included in the business income of his unincorporated business.

CONCLUSIONS OF LAW

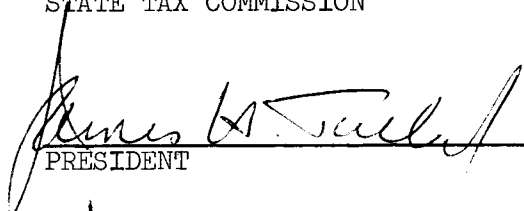
A. That petitioner's activities as an employee of Koko were so interrelated with his other business activities that said activities constituted part of his unincorporated business within the meaning and intent of section 703 of the Tax Law.

B. That the income received by petitioner for work performed for Koko was subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

C. That the petition of Leon Kittay is denied and the Notice of Deficiency issued March 27, 1967 is sustained.

DATED: Albany, New York
September 20, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER