

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ALBERT LIBMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (8) 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1967, 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 14th day of February , 1978 , he served the within
Notice of Decision by (certified) mail upon Albert Libman

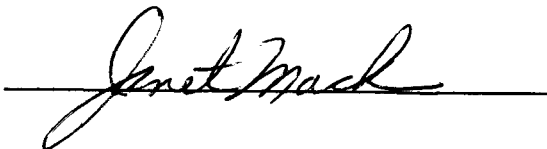
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Albert Libman
3467 Bertha Drive
Baldwin, New York 11510

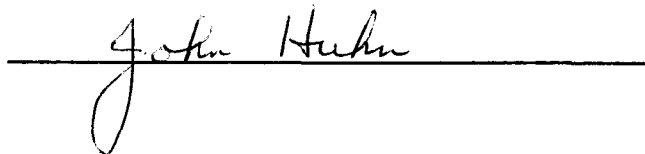
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

14th day of February , 1978.





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State of New York
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She is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of February , 1978 , she served the within

Notice of Decision by (certified) mail upon Edward M. Kaplan &
Stanley Rogouin, Esqs.
(representative of) the petitioner in the within proceeding,

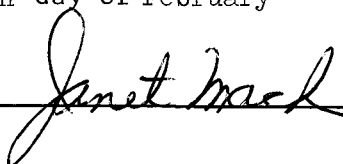
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
Edward M. Kaplan & Stanley Rogouin, Esqs.
as follows: 10 E. 40th Street
New York, New York 10007

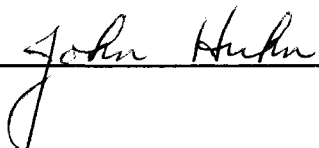
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last known address of the (representative of the) petitioner.

Sworn to before me this

14th day of February , 19 78







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

February 14, 1978

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

**Albert Libman
3467 Bertha Drive
Baldwin, New York 11510**

Dear Sir:

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 ~~(30)~~ **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: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALBERT LIBMAN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967, 1968, 1969 and 1970.	:	

Petitioner, Albert Libman, 3467 Bertha Drive, Baldwin, New York 11510, 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, 1968, 1969 and 1970 (File No. 13860).

On June 23, 1977, he advised the State Tax Commission, in writing, that he desired to waive a small claims hearing and to submit the case to the State Tax Commission upon the entire record contained in the file. After due consideration of said record, the Commission renders the following decision.

ISSUES

I. Whether the selling activities of petitioner during the years 1967, 1968, 1969 and 1970 constituted the carrying on of an unincorporated business.

II. If petitioner was engaged in an unincorporated business, whether a deduction for charitable contributions was allowable in the years at issue for unincorporated business tax purposes.

III. If petitioner was engaged in an unincorporated business, whether his failure to file unincorporated business tax returns was due to reasonable cause.

FINDINGS OF FACT

1. Petitioner, Albert Libman, filed New York State personal income tax returns for the years 1967 through 1970, in which he indicated his occupation to be that of a manufacturer's representative; therefore, he reported the income derived from this activity as business income. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner was engaged in the carrying on of an unincorporated business and that the income derived therefrom was subject to unincorporated business tax. Accordingly, the Bureau issued a Notice of Deficiency against him on February 26, 1973 for the years 1967, 1968, 1969 and 1970. Said Notice amounted to \$3,009.88 in unincorporated business tax, plus \$946.32 in penalty and \$563.35 interest, for a total due of \$4,519.55.

3. Petitioner's income from his selling activities was derived from the following principals:

	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Haruck, Inc.	\$11,539.83	\$ 225.00	\$ - 0 -	\$ - 0 -
Seymour Mann	8,468.07	19,444.34	13,855.46	28,667.40
S. Alexander & Son	852.64	183.40	- 0 -	- 0 -
Jack Richter & Co.	304.39	107.40	- 0 -	- 0 -
Harry Rispler	190.80	488.50	- 0 -	- 0 -
Circle Imports	96.83	- 0 -	- 0 -	- 0 -
International China	- 0 -	17,576.00	17,458.01	16,164.88
Guild Crest	- 0 -	- 0 -	- 0 -	477.27

4. Petitioner was a manufacturer's representative, selling giftware and china on a commission basis. He maintained an office in his home. He was not reimbursed by his principals for the expenses he incurred, but rather deducted these expenses on Federal Schedule "C". He was not prevented from carrying additional non-competing lines of merchandise for other principals. There was no division of petitioner's time between his principals, nor did they withhold any taxes or other payroll deductions from his compensation. In 1970 petitioner hired a sales representative to whom he paid commissions in the amount of \$10,260.00. No control was exercised by petitioner's principals over his day-to-day selling activities, other than to assign him his territory and to approve his sales' orders and prices.

5. Petitioner had charitable contributions for unincorporated business tax purposes of \$730.00 for 1967, \$1,437.00 for 1968, \$938.50 for 1969 and \$1,044.00 for 1970.

6. Petitioner contended that he did not file unincorporated business tax returns for the years 1967 through 1970, because he relied on his own interpretation of the 1968 instructions for Form IT-202 (New York State Unincorporated Business Tax Return).

CONCLUSIONS OF LAW

A. That the selling activities of petitioner, Albert Libman, during the years 1967, 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 amounts for charitable contributions allowable as deductions for unincorporated business tax purposes were \$730.00 for 1967, \$1,437.00 for 1968, \$938.50 for 1969 and \$1,044.00 for 1970. Allowing said deductions reduces the unincorporated tax due to \$261.97 for 1967, \$1,001.14 for 1968, \$723.15 for 1969 and \$823.01 for 1970.

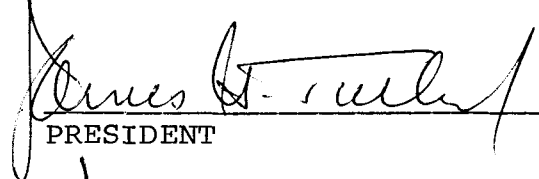
C. That petitioner's failure to file unincorporated business tax returns for the years at issue was not due to reasonable cause within the meaning and intent of section 685 of the Tax Law. Therefore, penalties were properly imposed under section 685(a) of the Tax Law for 1967 and 1968 and sections 685(a)(1) and 685(a)(2) of the Tax Law for 1969 and 1970.


D. That the petition of Albert Libman is granted to the extent of allowing deductions for charitable contributions as shown in Conclusion of Law "B"; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 26, 1973 and that as modified, the unincorporated business tax shall be due, together with such additional interest and penalty as may be lawfully owing; therefore, except as so granted, the petition is in all other respects denied.

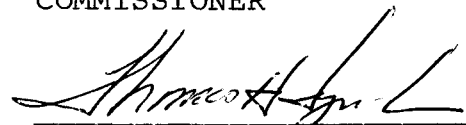
DATED: Albany, New York

February 14, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER