

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP MITTENTHAL

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 ~~(x)~~ ~~1971~~ ~~(x)~~ 1972. :

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 6th day of February , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Philip Mittenthal

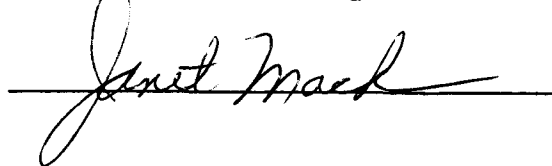
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Philip Mittenthal
1230 Park Avenue
New York, New York 10028

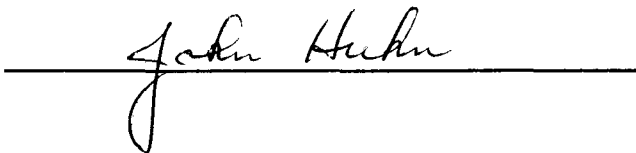
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of February , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP MITTENTHAL

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 ~~(x) 1972~~ 1972.:
~~(x) 1972~~

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 6th day of February, 1978, he served the within
Notice of Decision by (certified) mail upon Lawrence J. Mittenthal

(representative of) the petitioner in the within proceeding,

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

as follows: Lawrence J. Mittenthal, CPA
275 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

6th day of February, 1978

Janet Mack

John Huhn



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

February 6, 1978

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

**Mr. Philip Mittenthal
1230 Park Avenue
New York, New York 10028**

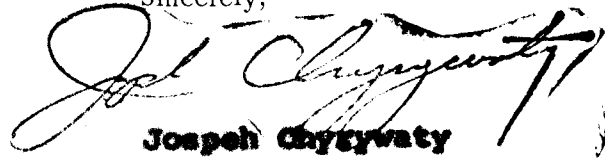
Dear Mr. Mittenthal:

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 **(b) 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	:	
PHILIP MITTENTHAL	:	
for Redetermination of a Deficiency or	:	DECISION
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1972.	:	

Petitioner, Philip Mittenenthal, 1230 Park Avenue, New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1972 (File No. 12727).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 16, 1976 and continued on April 26, 1977 at 10:45 A.M. Petitioner appeared pro se and by Lawrence J. Mittenenthal, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities during the year 1972 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Philip Mittenenthal, and his wife filed a New York State combined income tax return for the year 1972. He did not file New York State unincorporated business tax returns for said year.

2. On September 27, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner on the grounds that the income derived from his activities as a real estate broker was subject to unincorporated business tax. An adjustment was also made in this Statement of Audit Changes with respect to petitioner's 1972 personal income tax liability, which is not being contested and is not at issue. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued against petitioner in the amount of \$263.37, plus penalty of \$68.39 and interest of \$39.29, for a total due of \$371.05.

3. Petitioner was a licensed real estate broker in New York State. Prior to 1972, he had been engaged in the real estate, brokerage and mortgage business as the president and 50 percent shareholder of a domestic corporation known as Amal Realty, Inc.

4. In January of 1972, petitioner was unable to continue his activities as executive of said real estate, brokerage and mortgage business and, consequently, sold his interest in Amal Realty, Inc. to the firm of J. P. and L. A. Kissling, Inc. hereinafter ("Kissling").

5. Petitioner signed a contract with Kissling in which petitioner was to be paid a fixed salary of \$25.00 per day for at least two days per week. Petitioner received \$2,450.00 in salary income from said firm during 1972.

6. During 1972 petitioner worked for Kissling, supervising and helping said firm's office staff handle the buildings to which he had sold his management rights.

7. J. P. and L. A. Kissling, Inc. provided petitioner with office space, a desk, telephone, telephone directory listing and secretarial services. However, it did not withhold social security, New York State or Federal income taxes from petitioner's income.

8. During 1972 petitioner incurred expenses of \$120.50 in connection with the receipt of \$8,582.57 in brokerage income. He also made charitable contributions in the sum of \$2,250.00 during said year.

CONCLUSIONS OF LAW

A. That Kissling exercised sufficient direction and control over the activities of petitioner during 1972 to result in an employer-employee relationship within the meaning and intent of section 703(b) of the Tax Law. Therefore, the salary income of \$2,450.00 which petitioner received from said employer during 1972 is not subject to unincorporated business tax.

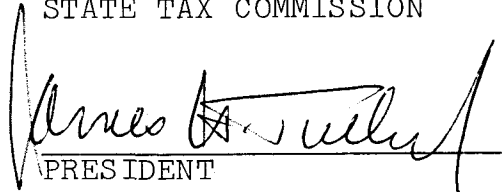
B. That although petitioner's brokerage income of \$8,582.00 for the year 1972 is subject to unincorporated business tax, no unincorporated business tax is due from petitioner for said year, after considering allowances for business expenses, contributions, allowance for taxpayer's services and the unincorporated business exemption.

C. That the petition of Philip Mittenthal is granted and the Notice of Deficiency issued April 11, 1975 is hereby cancelled.

DATED: Albany, New York

February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER