

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

THOMAS F. and NANCY MURPHY :

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(s)~~ 23 of the :  
Tax Law for the Year ~~(s)~~ ~~xxxx~~ ~~Period(s)~~ 1971 :  
through 1974

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 Thomas F. & Nancy Murphy  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Thomas F. & Nancy Murphy  
1258 Imperial Drive  
Webster, New York 14580  
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)~~  
~~xxxx~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of)~~ petitioner.

Sworn to before me this

24th day of April , 1978.

*[Signature]*

*John Huhn*

STATE OF NEW YORK  
STATE TAX COMMISSION

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THOMAS F. and NANCY MURPHY

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a Revision of a Determination or a Refund :  
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State of New York  
County of Albany

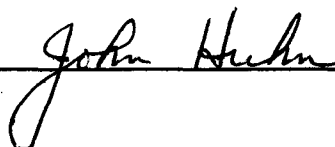
John Huhn, being duly sworn, deposes and says that  
she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of April, 1978, she served the within  
Notice of Decision by (certified) mail upon Peter T. Hraber, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Peter T. Hraber, CPA  
c/o Forth, Gilman & Hraber  
908 Sibley Tower Bldg.  
Rochester, NY 14604  
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





UNITED STATES DEPARTMENT OF JUSTICE

ATTORNEY GENERAL

WASHINGTON, D. C.

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

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

April 24, 1978

Thomas F. & Nancy Murphy  
1258 Imperial Dr.  
Webster, New York 14580

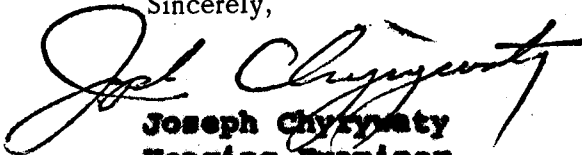
Dear Mr. & Mrs. Murphy:

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(s) **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 Chynoweth**  
**Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

OFFICE OF THE ATTORNEY GENERAL

STATE OF NEW YORK

IN SENATE

January 1, 1910

REPORT

OF THE

COMMISSIONER

OF THE LAND OFFICE

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
THOMAS F. and NANCY MURPHY	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1971 through 1974.	:	

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Petitioners, Thomas F. and Nancy Murphy, 1258 Imperial Drive, Webster, New York 14580, 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 through 1974 (File No. 10522).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 9, 1977 at 9:15 A.M. Petitioners appeared by Peter T. Hrabar, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

#### ISSUE

Whether the services which petitioner Thomas F. Murphy rendered to Happy Acres Golf and Country Club, Inc. as a golf

professional during the years 1971 through 1974 were so inter-related and interconnected with his business of operating a golf pro-shop, so as to constitute part of said business.

FINDINGS OF FACT

1. Petitioner Thomas F. Murphy filed unincorporated business tax returns for the years 1971 through 1974 for a golf pro-shop which he operated at Happy Acres Golf and Country Club, Inc. (hereinafter "Happy Acres"). He did not include salary income which he received from Happy Acres in the business income reported on said returns.

2. The Income Tax Bureau contended that his salary income from Happy Acres was so interrelated and interconnected with his unincorporated business, as to constitute a part of his unincorporated business. Accordingly, a Notice of Deficiency was issued against petitioners for the years 1971 through 1974 on December 22, 1975 in the amount of \$885.42 in unincorporated business tax, plus \$133.86 in interest, for a sum total due of \$1,019.28.

3. Petitioner Thomas F. Murphy performed services as the head golf professional at Happy Acres during the years at issue. His duties also included collecting greens' fees, supervising golf leagues and carrying out Happy Acres' policies regarding member and non-member players. He was paid \$200.00 per week

during the golfing season, from which taxes and social security were deducted. He was under the supervision and control of Happy Acres and worked approximately 15 hours a day during the golf season.

4. At his golf pro-shop, petitioner Thomas F. Murphy sold and rented golf equipment and retained all profits from said sales and rentals. Petitioner Thomas F. Murphy kept separate books and records for the golf pro-shop and had a separate employer identification number.

5. Petitioner Thomas F. Murphy's assistants also performed services for Happy Acres which were separate from the operation of the golf pro-shop. They were paid by separate checks issued by Happy Acres for these services.

#### CONCLUSIONS OF LAW

A. That the services rendered by petitioner Thomas F. Murphy during the years 1971 through 1974 as an employee of Happy Acres, were not so interrelated and interconnected with his regular business of operating a golf pro-shop so as to constitute part of such business; therefore, the salary received by petitioner for services rendered as an employee of said corporation was exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

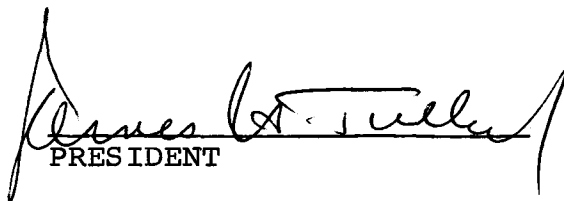


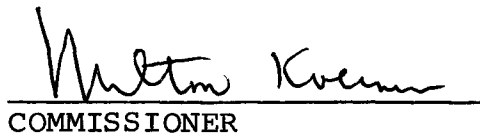
(Although it is moot in view of this conclusion, petitioner Nancy Murphy was not engaged in the unincorporated business and her name should not have been included on the Notice of Deficiency).

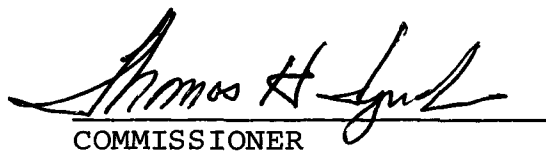
B. That the petition of Thomas F. and Nancy Murphy is granted and the Notice of Deficiency issued December 22, 1975 is cancelled.

DATED: Albany, New York  
April 24, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER