

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK H. SAMUELS

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) ~~or Period(s)~~ 1969 :
and 1970

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 , 19 78, ~~she~~ served the within
Notice of Decision by (certified) mail upon Jack H. Samuels

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jack H. Samuels
56 Rensselaer Dr.
Rochester, New York 14618

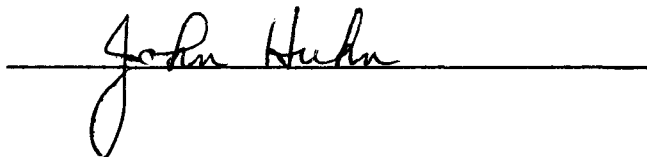
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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 , 19 78





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JACK H. SAMUELS

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) ~~xxx Period(s)~~ 1969 :
and 1970

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 Robert Oppenheimer, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert Oppenheimer
1100 Crossroads Office Bldg.
Rochester, NY

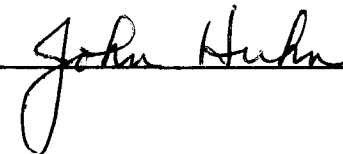
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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







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

Jack H. Samuels
56 Rensselaer Dr.
Rochester, NY 14618

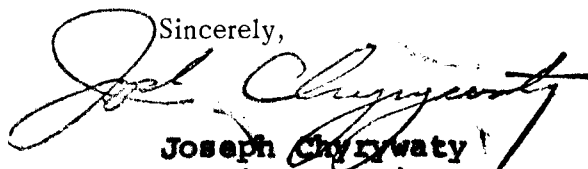
Dear Mr. Samuels:

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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

JACK H. SAMUELS : DECISION

for Redetermination of a Deficiency or for Refund:
of Unincorporated Business Tax under Article 23
of the Tax Law for the Years 1969 and 1970. :

Petitioner, Jack H. Samuels, 56 Rensselaer Drive, Rochester, New York 14618, filed a petition for redetermination of a deficiency or for refund or unincorporated business tax under Article 23 of the Tax Law for the years 1969 and 1970 (File No. 12354).

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 10, 1977 at 9:15 A.M. Petitioner appeared by Robert Oppenheimer, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUES

I. Whether petitioner was engaged in the carrying on of an unincorporated business during the years 1969 and 1970.

II. If so, whether interest and penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law were properly asserted against him.

FINDINGS OF FACT

1. Petitioner, Jack H. Samuels, timely filed New York State personal income tax returns for the years 1969 and 1970. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's selling activities during the years 1969 and 1970 constituted the carrying on of an unincorporated business. It issued a Notice of Deficiency against him on July 28, 1975 in the amount of \$814.98 in unincorporated business tax, plus \$233.10 in interest and a penalty of \$387.12 pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law, for a total due of \$1,425.20.

3. At the hearing, petitioner stated that he agreed that his selling activities during the years 1969 and 1970 constituted the carrying on of an unincorporated business. He contended that interest and penalties should be waived because he did not prepare his own tax returns and that he had relied on the advice of his accountant in not filing unincorporated business tax returns.

CONCLUSIONS OF LAW

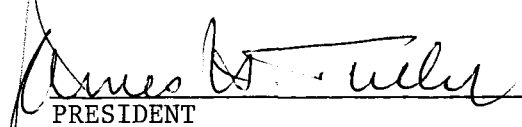
A. That petitioner, Jack H. Samuels, was engaged in the carrying on of an unincorporated business during the years 1969 and 1970; thus, the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of sections 701 and 703 of the Tax Law.

B. That interest is due on any underpayment of tax in accordance with section 684 of the Tax Law and that such interest may not be waived.

C. That petitioner, Jack H. Samuels, had reasonable cause for his failure to file unincorporated business tax returns for 1969 and 1970; therefore, his petition is granted to the extent of cancelling the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued July 28, 1975 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER