

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

ARTHUR B. and <sup>of</sup> IDA L. SMITH

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, 1970 and 1971.

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 22 day of March, 1978, she served the within  
Notice of Decision by (certified) mail upon Arthur B. & Ida L.  
Smith

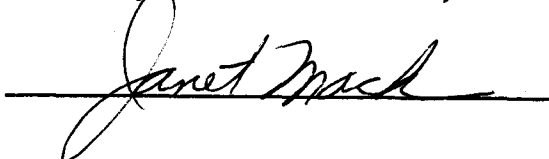
~~XXXXXX~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Arthur B. & Ida L. Smith  
R.D. #1, Schuyler Road  
East Syracuse, New York 13057

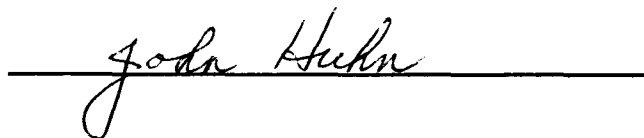
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~XXXXXX~~  
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

22 day of March, 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
ARTHUR B. and IDA L. SMITH

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) ~~XXXXXX~~ :  
1967, 1970, 1971

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 22 day of March, 1978, ~~He~~ served the within  
George Shattuck, Atty.  
Notice of Decision by (certified) mail upon c/o Bond, Schoeneck &  
King

(representative of) the petitioner in the within proceeding,

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

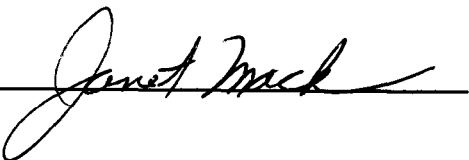
as follows: George Shattuck, Atty.  
c/o Bond, Schoeneck & King  
1 Lincoln Center  
Syracuse, New York 13202

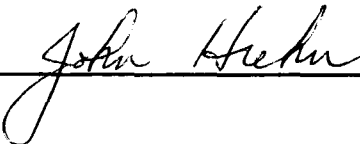
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

22 day of March, 1978.







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

**March 22, 1978**

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

**Arthur B. & Ida L. Smith  
R.D. #1, Schuyler Road  
East Syracuse, New York 13957**

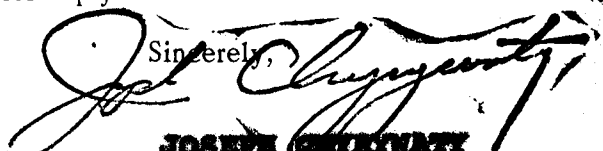
**Dear Mr. & Mrs. Smith:**

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 ~~722~~ **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

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
ARTHUR B. and IDA L. SMITH : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law :  
for the Years 1967, 1970 and 1971. :  
:

Petitioners, Arthur B. and Ida L. Smith, R.D. #1, Schuyler Road, East Syracuse, New York 13057, 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, 1970 and 1971 (File No. 10747).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on July 26, 1977 at 1:15 P.M. Petitioners appeared by George C. Shattuck, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

## ISSUES

I. Whether gains from the sales of parcels of land, as well as the interest income received from installment sales of said parcels by petitioners were subject to unincorporated business tax.

II. Whether the unincorporated business tax as applied to petitioners violates the 14th Amendment and other provisions of the United States Constitution, as well as Article 1, section 11 and other provisions of the Constitution of the State of New York.

III. Whether penalties imposed by the Income Tax Bureau pursuant to sections 685(a) (1) and (2) of the Tax Law against petitioners were proper.

#### FINDINGS OF FACT

1. Petitioners, Arthur B. and Ida L. Smith, filed New York State personal income tax returns for the years 1967, 1970 and 1971. They did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioners' gains from sales of farmland, as well as interest received on mortgages from farmland sold on the installment basis, were subject to unincorporated business tax. A Notice of Deficiency was issued against petitioners on August 26, 1974 in the amount of \$3,905.17 in unincorporated business tax, plus \$1,571.37 in penalty and \$789.15 in interest, for a total due of \$6,265.69.

3. Petitioners contended that they were not engaged in the business of farming during the years at issue and that after 1965, the property was held for investment and appreciation. Petitioners also contended that approximately 50% of the parcels of land sold were not fit for pasture or farming and were never used for these purposes.

4. For many years, petitioners owned and operated a dairy farm in DeWitt, New York. All the land had been purchased or inherited and was contiguous. In 1964 petitioner Arthur B. Smith was seventy-two years of age and unable to continue working on the farm. Petitioners sold the cattle in 1964 and 1965; however, they continued to engage in a limited amount of farming. They sold small amounts of vegetables, hay, wood and top-soil and had no other occupation during the years at issue.

5. A new highway was constructed nearby which made petitioners' property valuable for commercial purposes. During the years 1967, 1970 and 1971, petitioners sold four parcels of farmland.

6. Petitioners filed Federal Schedule "F" (Farm Income and Expenses), claiming net farm losses in the amount of \$6,238.87 for the year 1967, \$8,023.00 for 1970 and \$7,814.00 for 1971. They deducted farm expenses, which included deductions for labor, repairs, fertilizer, fuel, taxes, insurance, depreciation, supplies, utilities and the rental of farm pasture.

7. Petitioners relied on the advice of their attorney for proper filing of their tax returns and the failure to file unincorporated business tax returns was not due to willful neglect.

#### CONCLUSIONS OF LAW

A. That the gain received from the sale of parcels of land and the interest income received from the installment sale of land constitutes income from the use of an asset, which was connected with

petitioners' farming business. It was not income received solely by reason of their holding, leasing or managing real property exempt from the imposition of unincorporated business tax, in accordance with the meaning and intent of section 703(e) of the Tax Law. Petitioners' gains and interest were includable in business gross income in accordance with the meaning and intent of section 705(a) of the Tax Law.

B. That it is immaterial that portions of the land were marginal or unusable, since all the land was connected and integrated with the farming business and was never used for any other purpose. Accordingly, petitioners' aforesaid real estate transactions during the years 1967, 1970 and 1971, constituted the carrying on of an unincorporated business; 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.

C. That the constitutionality of the laws of the State of New York is presumed at the administrative level by the New York State Tax Commission. There is no jurisdiction at the administrative level to declare such laws unconstitutional. Therefore, it must be presumed that sections 703 and 705 of the Tax Law are constitutional to the extent that they relate to the imposition of an unincorporated business tax liability against petitioners.

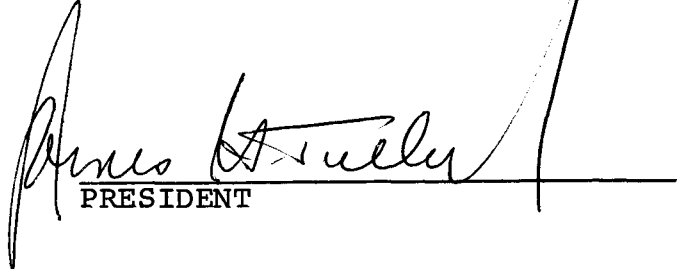
D. That petitioners had reasonable cause for their failure to file unincorporated business tax returns for the years 1967, 1970

and 1971. Therefore the penalties asserted against them (pursuant to sections 685(a)(1) and (2) of the Tax Law) for said years are cancelled and the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued August 26, 1974.

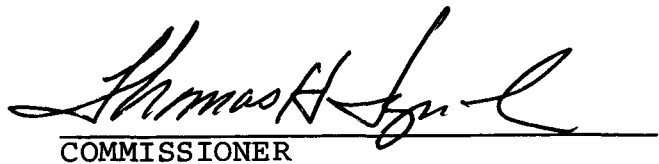
E. That the petition of Arthur B. and Ida L. Smith, except as so granted, is denied, and the Notice of Deficiency, except as so modified by Conclusion of Law "D", is sustained.

DATED: Albany, New York  
March 22, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER