

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH TOBIN

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) ~~xxx Period(s)~~ :
1971, 1972 and 1973.

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 25th day of August , 19 78 ~~she~~ served the within
Notice of Decision by (certified) mail upon Joseph Tobin
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Joseph Tobin
P.O. Box 303, Cooper Street Station
New York, New York 10003

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

25th day of August , 1978.

[Signature]

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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1971, 1972 and 1973.

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 25th day of August , 1978, she served the within
Notice of Decision by (certified) mail upon Milton A. Rainbeau, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Milton A. Rainbeau, CPA
663 Fifth Avenue
New York, New York 10022
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

25th day of August , 19 78

[Signature]

John Huhn



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

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

August 25, 1978

Mr. Joseph Tobin
P.O. Box 303, Cooper Street Station
New York, New York 10003

Dear Mr. Tobin:

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** 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 TAX COMMISSION

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 11, 1977 at 1:15 P.M. Petitioner appeared by Milton A. Rainbeau, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether the income derived from petitioner's activities as a woolen jobber was subject to unincorporated business tax.

II. If so, whether any portion of petitioner's gross income was allocable to sources outside New York State.

FINDINGS OF FACT

1. Petitioner, Joseph Tobin, filed New York State income tax resident returns for the years 1971, 1972 and 1973. However, he did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau issued one Notice of Deficiency against petitioner for the years 1971 and 1972 and another Notice of Deficiency for the year 1973, on the grounds that the income derived from his activities as a woolen jobber was subject to unincorporated business tax. The unincorporated business tax which the Income Tax Bureau determined to be due from petitioner for the year 1972 also included adjustments which resulted from Federal audit changes that are not at issue.

3. Petitioner was a self-employed jobber in the business of buying and selling odd pieces of material.

4. Petitioner asserted that he stored his material at rented quarters located at 30 East 20th Street, New York, New York. From here it was subsequently packed and shipped out on a consignment basis to various customers located outside New York State. Petitioner contended that upon completion of the shipments, he would visit his prospective customers outside New York State in order to consummate sales.

5. Petitioner did not maintain a regular place of business outside New York State.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Joseph Tobin, during the years 1971, 1972 and 1973 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law; thus his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

B. That the storage and packing facility at 30 East 20th Street, New York, New York, was a regular place of business in accordance with the meaning and intent of section 707(a) of the Tax Law.

C. That petitioner did not have a regular place of business outside the State of New York; therefore, all of the excess of his unincorporated business gross income (over his unincorporated business deduction) must be allocated to New York State, in accordance with the meaning and intent of section 707(a) of the Tax Law.

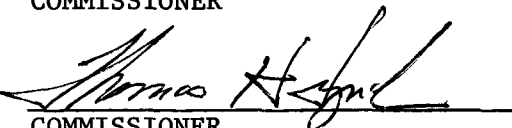
D. That the petitions of Joseph Tobin are denied and the Notice of Deficiency issued March 31, 1975 in the sum of \$1,300.21 and the Notice issued March 28, 1977 in the sum of \$1,039.24 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER