

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

UNION SPRINGS HARDWARE COMPANY

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 (s) or (s)~~ :  
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 13 day of October, 1978, she served the within

Notice of Decision by (certified) mail upon Union Springs  
Hardware Company

~~(representative of)~~ the petitioner in the within proceeding,

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

as follows: Union Springs Hardware Company

c/o Morton Kahn

15 Seminary Street

Union Springs, NY 13160

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

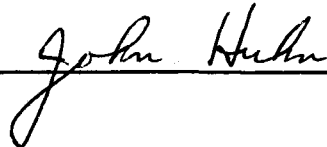
the United States Postal Service within the State of New York.

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 the)~~ petitioner.

Sworn to before me this

13 day of October, 1978





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STATE TAX COMMISSION

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State of New York  
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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 13 day of October , 1978 , she served the within  
Notice of Decision by (certified) mail upon Morton Kahn

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Morton Kahn  
15 Seminary Street  
Union Springs, NY 13160

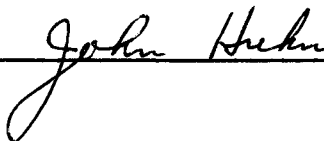
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

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

13 day of October , 1978







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

**October 13, 1978**

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

**Union Springs Hardware Company  
c/o Morton Kahn  
15 Seminary Street  
Union Springs, NY 13160**

**Gentlemen:**

Please take notice of the **Notice**  
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section **(8) 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 Chyrynsky  
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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|---|---|----------|
| In the Matter of the Petition           | : |          |
|   | : |          |
| of                                      | : |          |
|   | : |          |
| UNION SPRINGS HARDWARE COMPANY          | : | DECISION |
|   | : |          |
| for Redetermination of a Deficiency or  | : |          |
| for Refund of Unincorporated Business   | : |          |
| Tax under Article 23 of the Tax Law for | : |          |
| the Year 1971.                          | : |          |

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Petitioner, Union Springs Hardware Company, c/o Morton Kahn, 15 Seminary Street, Union Springs, New York 13160, 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 1971 (File No. 10736).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 333 East Washington Street, Syracuse, New York, on July 25, 1977 at 1:15 P.M. Petitioner appeared by Morton Kahn, partner. The Income Tax Bureau appeared by Peter Crotty, Esq. (Andrew Haber, Esq., of counsel).

ISSUES

I. Whether accounts receivable collected by a partnership after its dissolution were subject to unincorporated business tax.

II. Whether the New York State Income Tax Bureau changed petitioner's Federal accounting period and method of accounting.

FINDINGS OF FACT

1. Union Springs Hardware Company filed a New York State partnership return on April 14, 1972. The partnership return covered the period January 1, 1971 to May 4, 1971, at which time the business was sold. On said return, petitioner included all expenses paid during 1971, but did not include accounts receivable collected between May 4, 1971 and December 31, 1971 totalling \$15,333.44. The partners reported the accounts receivable so collected on their personal income tax returns only.

2. The Income Tax Bureau contended that the accounts receivable constituted income received during liquidation of the partnership and that said accounts were, therefore, subject to unincorporated business tax. It issued a Statement of Audit Changes which included the accounts receivable and which increased the exemption to \$5,000.00, in order to provide for the entire year. The Income Tax Bureau did not change petitioner's cash basis method of accounting, nor did it change petitioner's usual accounting period. Accordingly, the Bureau issued a Notice of Deficiency to petitioner on February 25, 1974 in the amount of \$494.40 in unincorporated business tax, plus \$55.19 in interest, for a total due of \$549.59.

3. After the business was sold, the partners set up a bank account entitled "Morton Kahn Hardware Company," in order to deposit outstanding accounts receivable which were collected after May 4, 1971. Petitioner issued seventy checks after May 4, 1971 in payment of creditors. Some of the accounts payable required negotiations with the suppliers as to the final amount due because of damaged goods, freight charges and prices charged.

CONCLUSIONS OF LAW

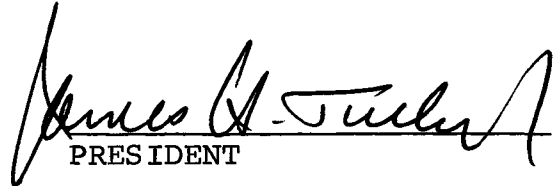
A. That petitioner, Union Springs Hardware Company, was engaged in the liquidation of an unincorporated business during the entire year 1971 and that the accounts receivable collected after May 4, 1971 by said company were subject to unincorporated business tax, in accordance with the meaning and intent of section 703(a) of the Tax Law.

B. That the Income Tax Bureau did not change petitioner's usual Federal accounting period or method of accounting in accordance with the meaning and intent of section 721 of the Tax Law.

C. That the petition of Union Springs Hardware Company is denied and the Notice of Deficiency issued February 25, 1974 in the sum of \$549.59 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
October 13, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER