

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BEN ZAREMBA

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) ~~or Period(s)~~ :  
1963 through 1971.

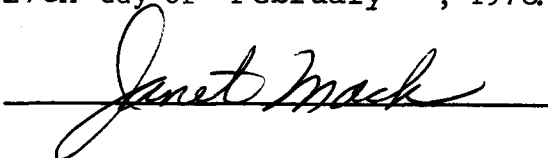
State of New York  
County of Albany

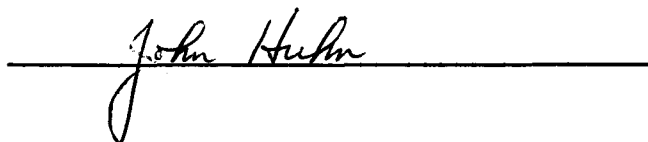
John Huhn, being duly sworn, deposes and says that  
~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 17th day of February, 1978, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Ben Zaremba  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Ben Zaremba  
125 Lake Street  
White Plains, New York  
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~~) petitioner.

Sworn to before me this

17th day of February, 1978.





STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BEN ZAREMBA

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) ~~1963 through 1971~~ :  
1963 through 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 17th day of February, 1978, he served the within  
Notice of Decision by (certified) mail upon Alvin I. Goidel

(representative of) the petitioner in the within proceeding,

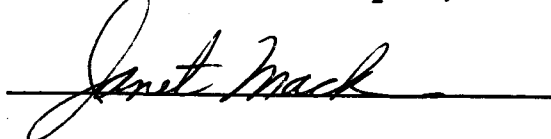
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Alvin I. Goidel, Esq.  
Goidel, Goidel & Helfenstein, P.C.  
127 John Street  
New York, New York 10038

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

17th day of February, 1978







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

**February 17, 1978**

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

**Mr. Ben Zaremba  
125 Lake Street  
White Plains, New York**

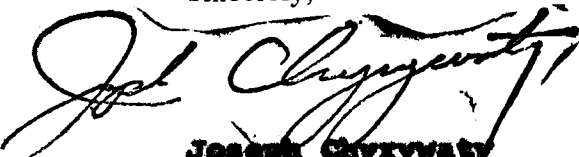
**Dear Mr. Zaremba:**

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 Chyrywat  
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	:	
BEN ZAREMBA	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1963 through 1971.	:	

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Petitioner, Ben Zaremba, residing at 125 Lake Street, White Plains, New York, 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 1963 through 1971 (File No. 00601).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 27, 1977 at 9:15 A.M. Petitioner appeared by Alvin I. Goidel, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

#### ISSUES

I. Whether the activities of petitioner as a luggage salesman during the years 1963 through 1971 constituted the carrying on of an unincorporated business.

II. Whether the Tax Law is unconstitutional by virtue of discriminatory practices in its application, thus depriving petitioner of equal protection and due process under the law.

FINDINGS OF FACT

1. Petitioner, Ben Zaremba, filed New York State personal income tax returns for the years 1963 through 1971. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau issued three notices of deficiency against petitioner for the years 1963 through 1971, on the grounds that his selling activities during said years constituted the carrying on of an unincorporated business and that his income derived therefrom was subject to unincorporated business tax. The Notice of Deficiency issued on November 29, 1971 for the years 1963 through 1966 asserted a deficiency of \$1,546.48, plus interest of \$546.67, for a total of \$2,093.15. Another Notice of Deficiency issued on November 29, 1971 for the years 1967 through 1969 asserted a deficiency of \$2,336.89, plus interest of \$330.43, for a total of \$2,667.32. This latter Notice of Deficiency also contained an adjustment to petitioner's personal income tax liability for the year 1969, which is not being contested by him, nor is it at issue. The last Notice of Deficiency issued on February 24, 1975 for the years 1970 and 1971 asserted a deficiency of \$995.07, plus interest of \$210.75, for a total of \$1,205.82.

3. As a luggage salesman, petitioner represented at least three principals during each of the years 1963 through 1971 and was paid on a commission by them. During said years, he received more than 60% of his commission income from one of his principals. The items which petitioner sold for his principals were noncompetitive.

4. Petitioner's principals did not withhold social security taxes or Federal and New York State income taxes from his compensation. Petitioner's principals did not provide him with any employee benefits. He was not reimbursed by his principals for the selling expenses he incurred. He deducted these expenses on Federal schedules "C" and also included the cost of maintaining a room in his home for business purposes as another deduction on said schedule.

5. Petitioner scheduled his own appointments, used his own discretion as to the division of his time and efforts, and employed his own techniques in order to consummate sales. His principals also permitted him to sell for others.

6. No oral testimony or documentary evidence was submitted regarding the issue of constitutionality.

#### CONCLUSIONS OF LAW

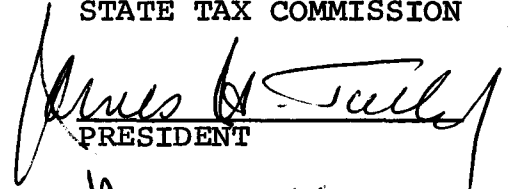
A. That the activities of petitioner, Ben Zaremba, as a luggage salesman during the years 1963 through 1971, constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law. Therefore, the income derived from said activities was subject to unincorporated business tax.

B. That the constitutionality of the laws of the State of New York are 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, to the extent that they relate to the imposition of unincorporated business tax, which is the subject of this proceeding.

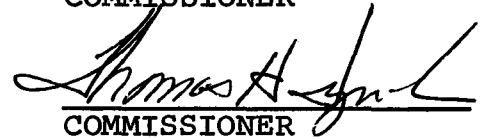
C. That the petition of Ben Zaremba is denied and the notices of deficiency issued heretofor are sustained.

DATED: Albany, New York  
February 17, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER