

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JAMES ZOES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(*) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ 1970, :
1971 and 1972.

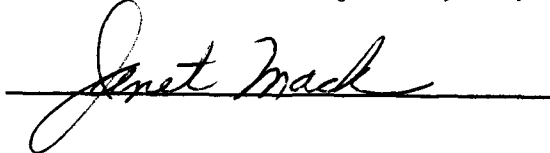
State of New York
County of Albany

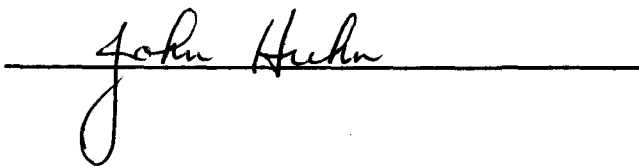
John Huhn , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of February , 1978 , she served the within
Notice of Decision by (certified) mail upon James Zoes
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: James Zoes
630 Fifth Avenue
New York, NY 10017
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)~~
~~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

6th day of February , 1978





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES ZOES

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) ~~or Period(s)~~ 1970, :
and 1971, 1972.

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 6th day of February , 1978, she served the within
Notice of Decision by (certified) mail upon Edward C. Lavine
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

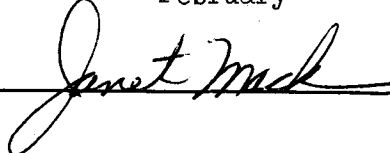
Edward C. Lavine
919 3rd Ave.
New York, NY 10022

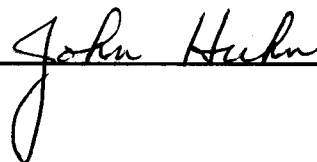
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

6th day of February , 19 78







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

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

February 6, 1978

James Zoon
630 Fifth Avenue
New York, NY 10017

Dear Mr. Zoon:

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(s) ~~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 :
JAMES ZOES : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the :
Years 1970, 1971 and 1972. :
:

Petitioner, James Zoes, 630 Fifth Avenue, New York, New York 10017, 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 1970, 1971 and 1972 (File No. 13786).

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 September 20, 1976 at 1:15 P.M. The petitioner appeared by Edward C. Lavine. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's business activities during the years 1970, 1971 and 1972 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, James Zoes, and his wife, Leni, filed New York State income tax resident returns for the years 1970, 1971 and 1972. Petitioner contended that these returns were erroneously prepared

by his former accountant and that various types of income were grouped into the gross receipts of an inactive business. Petitioner did not file unincorporated business tax returns for 1970, 1971 or 1972.

2. On September 24, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, imposing unincorporated business tax for the years 1970 through 1972 in the amount of \$2,069.25, plus penalty and interest, on the grounds that income derived from the petitioner's activities as a salesman was subject to unincorporated business tax. Accordingly, a Notice of Deficiency was issued therefor on January 26, 1976.

3. Prior to 1970, petitioner was actively involved in an unincorporated business under the name and style of Petroleum Pipe and Steel Co., whose principal activity was the buying and selling of steel pipes. Due to the poor market conditions during the years 1970 through 1972, Petroleum Pipe and Steel Co. was inactive and had no gross receipts.

4. During the years at issue, petitioner, James Zoes, and his wife, Leni Zoes were the sole stockholders and officers of Durum Securities Corporation, rendering services as underwriters of new issues of stock. As an employee and corporate officer, petitioner was compensated by Durum Securities Corporation in the amount of \$24,000.00 in 1970, \$42,000.00 in 1971, and \$12,000.00 in 1972.

5. During the years 1971 and 1972, petitioner rendered services as a consultant for the firm of Holiday Universal Inc. He received consultation fees of \$2,000.00 and \$14,000.00, respectively. Consultation and corporate activities were performed by him at different times for different clients.

6. On January 3, 1972, petitioner, James Zoes, received a payment of \$22,300.78. Said amount represented his distributive share of the settlement of a claim for damages sustained by Consolidated Brokerage of Denver, Colorado, in which petitioner had an investment during the years 1950 and 1951.

7. Business expenses claimed by the petitioner during the years 1970 through 1972 were incurred by him in maintaining the inactive firm of Petroleum Pipe and Steel Co. and in conducting his activities as an employee of Durum Securities Corporation.

CONCLUSIONS OF LAW

A. That petitioner's activities as a corporate officer of Durum Securities Corporation during the years 1970, 1971 and 1972, were performed as an employee. As such the income derived therefrom was not subject to the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the proceeds from a damage settlement received by petitioner were not subject to the unincorporated business tax, since said proceeds were not an item of gross income from an unincorporated business in accordance with the meaning and intent of section 705 of the Tax Law.

C. That the activities of petitioner as a consultant for Holiday Universal Inc. during the years 1971 and 1972, constituted the carrying on of an unincorporated business and that the income derived therefrom was subject to the unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.

D. That the petition of James Zoes is granted to the extent of 1) eliminating the deficiency for the years 1970 and 1971, 2) imposing unincorporated business tax on the consultation fees which total \$14,000.00 for 1972 (without allowing any business deductions, except as provided under sections 708(a) and 709(1) of the Tax Law) and 3) recomputing penalties due under sections 685(a)(1) and 685(a)(2) of the Tax Law, attributable thereto for the year 1972. The Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued January 26, 1976 as indicated herein and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

SMALL CLAIMS

STATE OF NEW YORK

Department of Taxation and Finance,

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227

FEB 23 1978

*Spent in Court
nearest delivery*

*NALN
2/15/78*

Edward C. Lavine
919 3rd Ave.
New York, NY 10022

for delivery

*Redden
2-15-78*

CERTIFIED

No. 4043331

MAIL

110 West 57th Street.
New York, N.Y. 10019



New York State Department of
TAXATION and FINANCE

TAX APPEALS BUREAU

February 28, 1978

TO Secretary to the State Tax Commission
.....

Please attach to decision.

M-75(8/76)

From Aloysius Nendza

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JAMES ZOES

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) :
1970, 1971 and 1972

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 28th day of February , 1978 , she served the within
Notice of Decision by (certified) mail upon Edward C. Lavine
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Edward C. Lavine
110 West 57th Street
New York, NY 10019

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

28th day of February , 19 78

