

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH GOLDMAN

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) ~~XXXXXXX~~ :
1972, 1973 & 1974.

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 4th day of May, 1979, she served the within
Notice of Decision by (certified) mail upon Kenneth Goldman

~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

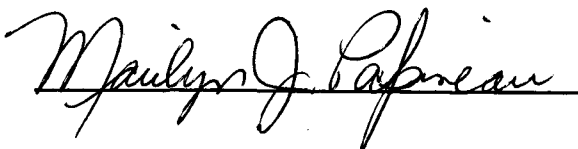
Kenneth Goldman
5 Danny Court
Dix Hills, NY 11746

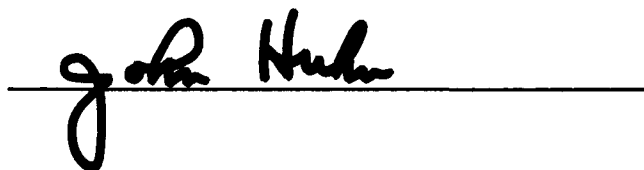
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

Sworn to before me this

4th day of May, 1979.


Marilyn J. Papineau


John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH GOLDMAN

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~~ :
1972, 1973 & 1974.

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 4th day of May, 1979, she served the within
Notice of Decision by (certified) mail upon Harvey Scheff, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Harvey Scheff, CPA
663 Fifth Avenue
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

4th day of May, 1979.

Marilyn J. Papineau

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

May 4, 1979

Mr. Kenneth Goldman
5 Danny Court
Dix Hills, NY 11746


Dear Mr. Goldman:

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 Chyorny
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KENNETH GOLDMAN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1972, 1973 and 1974.	:	

Petitioner, Kenneth Goldman, 5 Danny Court, Dix Hills, New York 11746, 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 1972, 1973 and 1974 (File No. 14489).

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 May 16, 1978 at 9:15 A.M. Petitioner appeared by Harvey Scheff, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a used-car buyer was subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Kenneth Goldman, timely filed New York State personal income tax resident returns for 1972, 1973 and 1974. Unincorporated business tax returns were not filed for said years.

2. The Income Tax Bureau held that the activities of petitioner, Kenneth Goldman, as a used-car buyer, constituted the carrying on of an unincorporated business. Accordingly, on February 24, 1976, it issued a Notice of Deficiency asserting unincorporated business tax of \$1,373.86, penalties of \$55.29 and \$508.25 (pursuant to section 685(c) and sections 685(a)(1), 685(a)(2) of the Tax Law) and interest of \$243.92, for a sum of \$2,181.32.

3. Petitioner's representative, Harvey Scheff, contended that petitioner represented Stevens Wholesalers, Inc. (hereinafter "Stevens") exclusively during 1972, 1973 and 1974, and that he was forbidden by them to represent other principals. Petitioner's transactions were subject to the approval of Stevens, which directed and controlled his activities as a used-car buyer and which compensated him on a commission basis, representing 50% of the profit derived from the sale of each automobile obtained on behalf of Stevens. In the event of a loss, petitioner was charged with 50% of said loss, not exceeding an amount greater than the commissions previously earned during the calendar year. Stevens was primarily concerned with the results of his buying activities and did not reimburse him for his business expenses.

4. Petitioner's representative did not submit documentary evidence to corroborate his contentions as stated in Finding of Fact "3".

5. Stevens did not withhold payroll taxes from petitioner's compensation.

6. Petitioner filed Federal Schedule "C" and paid self-employment taxes for the years at issue.

CONCLUSIONS OF LAW

A. That Stevens Wholesalers, Inc. did not exercise sufficient direction and control over petitioner, Kenneth Goldman's activities, so as to establish an

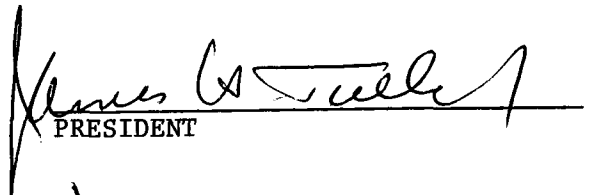
employer/employee relationship within the meaning and intent of section 703(b) of the Tax Law and 20 NYCRR 203.10(b); therefore, petitioner is subject to the imposition of unincorporated business tax.

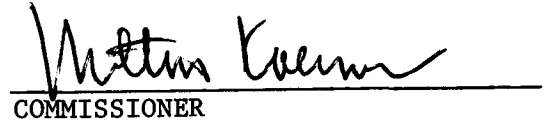
B. That the petition of Kenneth Goldman is denied and the Notice of Deficiency issued February 24, 1976 is sustained, together with such additional interest as may be lawfully owing.

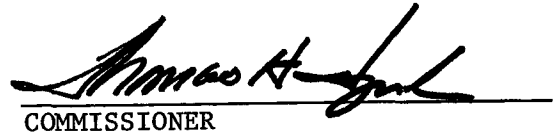
DATED: Albany, New York

May 4, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER