

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Walter (dec'd) & Elizabeth Hyman (Est. of) :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1966, 1971 & 1972. :

State of New York
County of Albany

Jay Vredenburg, 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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Walter (dec'd) & Elizabeth Hyman (Est. of), the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Walter (dec'd) & Elizabeth Hyman (Est. of)
c/o Hecht, Frank, Brayer & Grill
New York, NY 10036

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Walter (dec'd) & Elizabeth Hyman (Est. of) :

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Unincorporated Business Tax :
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for the Years 1966, 1971 & 1972. :

State of New York
County of Albany

Jay Vredenburg, 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 16th day of November, 1979, he served the within notice of Decision by certified mail upon Michael Hecht the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Michael Hecht
Hecht, Frank, Brayer & Grill
1501 Broadway
New York, NY 10036

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
16th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 16, 1979

Walter (dec'd) & Elizabeth Hyman (Est. of)
c/o Hecht, Frank, Brayer & Grill
1501 Broadway
New York, NY 10036

Dear Ms. Hyman:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Michael Hecht
Hecht, Frank, Brayer & Grill
1501 Broadway
New York, NY 10036
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ESTATE OF WALTER HYMAN, DECEASED	:	
	:	
and	:	DECISION
	:	
ELIZABETH HYMAN	:	
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1966, 1971 and 1972.	:	

Petitioners, Estate of Walter Hyman, Deceased, and Elizabeth Hyman c/o Hecht, Frank, Brayer & Grill, 1501 Broadway, New York, New York 10036, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1966, 1971 and 1972 (File No. 12208).

A formal hearing was held before George F. Murphy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on February 10, 1977 at 1:15 P.M. The Estate of Walter Hyman, Deceased appeared by Michael Hecht, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUES

I. Whether petitioner Walter Hyman's activities as a theatrical manager during the years 1966, 1971 and 1972 constituted the carrying on of an unincorporated business.

II. Whether petitioner Elizabeth Hyman is liable for unincorporated business tax on the income derived from petitioner Walter Hyman's business activities during 1966 and 1971.

FINDINGS OF FACT

1. On May 9, 1975, the Income Tax Bureau issued a Statement of Audit Changes to the petitioners for the years 1966 and 1967 holding the income derived from petitioner Walter Hyman's activities as a theatrical producer for the year 1966 subject to unincorporated business tax. Additionally, petitioners' taxable income for the years 1966 and 1967 was increased by adjustments determined by an Internal Revenue Service audit. On January 26, 1976, a Notice of Deficiency was issued asserting unincorporated business tax of \$173.12 and additional personal income tax of \$503.80, a total of \$676.92, plus interest of \$238.82, for a total of \$1,015.74.

2. Petitioners do not contest the adjustments made as a result of the federal audit. Furthermore, the unincorporated business tax issue for the year 1966 was conceded by the petitioners at the commencement of the formal hearing, since petitioner Walter Hyman's business activities during said year were different from his activities engaged in during 1971 and 1972, i.e., during 1966, said petitioner's activities were those of a promoter, producing performances in Carnegie Hall and other theaters.

3. On December 4, 1973, the Income Tax Bureau issued a Statement of Audit Changes to the petitioners for the year 1971, holding that "The Income from your activities as theatrical management is subject to the unincorporated business tax." On November 24, 1975, a Notice of Deficiency was issued against both petitioners asserting unincorporated business tax in the amount of \$10,331.09, plus interest of \$2,236.37 and penalty of \$2,582.77, for a total due of \$15,150.23.

4. On April 17, 1974, the Income Tax Bureau issued a Statement of Audit Changes to petitioner Walter Hyman, for the year 1972, again on the basis that business activities of "theatrical management" were subject to unincorporated business tax. On November 24, 1975, a Notice of Deficiency was issued against

petitioner Walter Hyman for unincorporated business tax of \$2,581.65, interest of \$505.54, and penalty of \$645.41, for a total due of \$3,732.60.

5. Petitioner Walter Hyman did not file unincorporated business tax returns for any of the years at issue.

6. During 1968, petitioner Walter Hyman began serving as theatrical manager for Dustin Hoffman, a well-known movie actor. Although no written contract was entered into, it was understood that the petitioner was to render services exclusively for Mr. Hoffman. He did so from 1968 through 1972.

7. Petitioner Walter Hyman's duties to Dustin Hoffman, were primarily to negotiate Mr. Hoffman's contracts. Mr. Hoffman personally decided which roles he would accept and who he would work for; he would then assign the petitioner to negotiate contract terms.

8. Petitioner Walter Hyman worked out of Mr. Hoffman's business office located on 55th Street, in Manhattan and utilized the services of Mr. Hoffman's secretary. He was under the direct supervision and control of Mr. Hoffman.

9. Petitioner Walter Hyman was paid on a commission basis, receiving an unspecified percentage of Mr. Hoffman's gross income. No income or social security taxes were withheld from his compensation. Mr. Hyman was not specifically reimbursed for business expenses incurred in carrying out his duties, but many of his bills, including his American Express charges, were paid directly by Mr. Hoffman.

CONCLUSIONS OF LAW

A. That the Notice of Deficiency for the years 1966 and 1967, dated January 26, 1976, was uncontested insofar as it applies to the Estate of Walter Hyman and to that extent is sustained. The deficiency in unincorporated business tax for the year 1966 can be imposed only against the Estate of Walter Hyman and not against petitioner Elizabeth Hyman, individually, since

the income derived from the activities at issue was not earned by her. The portion of the deficiency pertaining to personal income tax was uncontested.

B. That sufficient direction and control was exercised by Duston Hoffman over petitioner Walter Hyman's activities so as to constitute a bona fide employer-employee relationship during the years 1971 and 1972.

C. That the Notice of Deficiency for the year 1971, dated November 24, 1975, and the Notice of Deficiency for the year 1972, dated November 24, 1975, are cancelled since petitioner Walter Hyman was a bona fide employee and his performance of services as such is not to be deemed an unincorporated business (section 703(b) of the Tax Law).

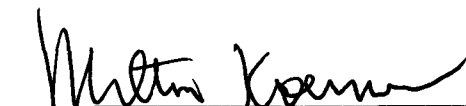
D. That the petition of the Estate of Walter Hyman, Deceased, and Elizabeth Hyman is granted to the extent provided in Conclusions of Law "A" and "C", and in all other respects denied.


DATED: Albany, New York

STATE TAX COMMISSION

NOV 16 1979


PRESIDENT


COMMISSIONER


COMMISSIONER