

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

George L. Innes :

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 1971, 1972 & 1973. :

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 31st day of August, 1979, he served the within notice of Decision by certified mail upon George L. Innes, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George L. Innes

43 President Ave.

Bronxville, NY 10708

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
31st day of August, 1979.

Mary Dominici

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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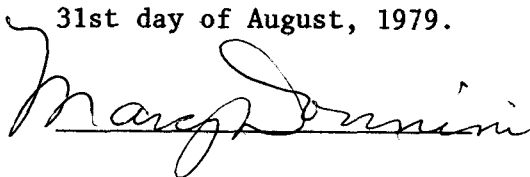
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon J. Arthur McNamara the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

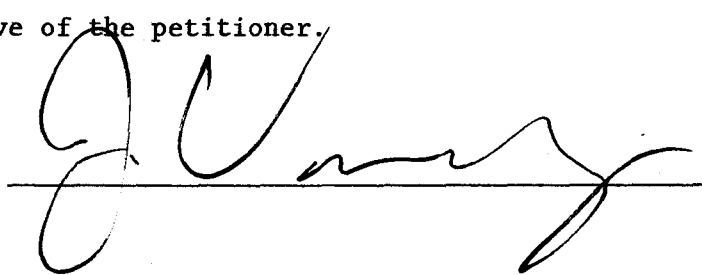
Mr. J. Arthur McNamara
Valhalla, NY 10595

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
31st day of August, 1979.







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

STATE TAX COMMISSION
JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

George L. Innes
43 President Ave.
Bronxville, NY 10708

Dear Mr. Innes:

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,

A handwritten signature in black ink, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
J. Arthur McNamara
Valhalla, NY 10595
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GEORGE L. INNES	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1971, 1972 and 1973.	:	

Petitioner, George L. Innes, 43 Prescott Avenue, Bronxville, New York 10708, 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 1971, 1972 and 1973 (File No. 17122).

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 June 20, 1978 at 9:15 A.M. Petitioner appeared with J. Arthur McNamara, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner's activities constituted the carrying on of an unincorporated business subject to unincorporated business tax, or whether such activities were services rendered as an employee, during 1971, 1972 and 1973.

FINDINGS OF FACT

1. Petitioner, George L. Innes, timely filed New York State combined income tax returns for 1971, 1972 and 1973, on which he indicated his occupation to be that of a consultant. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended (on the basis of a State Tax Commission decision dated March 29, 1976 for 1967, 1968, 1969 and 1970) that petitioner's business activities constituted the carrying on of an unincorporated business. On October 26, 1976, the Bureau issued a Notice of Deficiency for 1971, 1972 and 1973 amounting to \$1,656.04 in unincorporated business tax, plus \$414.19 in interest, for a total of \$2,070.23.

3. During the years at issue, petitioner performed services as a consultant to the chemical industry for several principals. His primary source of income was from the marketing consultants, Charles H. Kline & Co., Inc. (hereinafter "Kline"). Petitioner earned 95% of his income from Kline on a per diem basis as a subcontractor/consultant. Kline provided petitioner with clerical help and office space.

4. Kline did not withhold income taxes or social security taxes from petitioner's compensation. He was permitted to work for other principals, had a business phone in his home which was listed in the yellow pages of the telephone directory, and was listed in various professional rosters as an independent consultant. He maintained an office in his home and filed a Federal Schedule "C," in order to claim his business deductions.

5. Petitioner was assigned projects by Kline. He did not submit documentary or any satisfactory evidence to show that he performed his services or day-to-day activities under the direction and control of Kline. Petitioner used his own letterhead when he submitted invoices to Kline for payment of services performed and expenses incurred.

6. On June 1, 1973, petitioner became an employee of Kline and entered into a written employment contract with said firm. He gave up his business phone, terminated all independent activities, and thereafter became involved in administrative matters as an employee of Kline. Income taxes and social security taxes were withheld from his wages as of June 1, 1973.

CONCLUSIONS OF LAW

A. That petitioner, George L. Innes, performed services for Charles H. Kline & Co., Inc. as an independent contractor. He was not an employee during 1971, 1972 and up to June 1, 1973; moreover, he was engaged in the carrying on of an unincorporated business, in accordance with the meaning and intent of section 703 of the Tax Law.

B. That the petition of George L. Innes is denied and the Notice of Deficiency issued October 26, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER