

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAUL SAVETH

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~~ :
1963 through 1973.

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 15th day of March, 1979, she served the within
Notice of Decision by (certified) mail upon Saul Saveth
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Saul Saveth
215-31 26th Avenue
Bayside, New York 11360

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

15th day of March, 1979

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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of Unincorporated Business :
Taxes under Article(§) 23 of the :
Tax Law for the Year(s) ~~xxxPeriod(s)~~ :
1963 through 1973.

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 15th day of March, 1979, she served the within
Notice of Decision by (certified) mail upon Robert E. Schulman

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Robert E. Schulman, CPA
30 East 42nd Street
New York, New York 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 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

15th day of March, 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

March 15, 1979

Mr. Saul Saveth
215-31 26th Avenue
Bayside, New York 11360

Dear Mr. Saveth:

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(8) **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,

MICHAEL ALEXANDER

SUPERVISING TAX HEARING OFFICER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
SAUL SAVETH	:	DECISION
for Redetermination of Deficiencies or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1963 through 1973	:	

Petitioner, Saul Saveth, 215-31 26th Avenue, Bayside, New York 11360, filed petitions for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963 through 1973 (File Nos. 12360, 12361 and 12362).

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 March 9, 1977 at 9:15 A.M. Petitioner appeared by Robert E. Schulman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUE

Whether the sales, design and managerial activities of petitioner during the years 1963 through 1973 constituted the carrying on of an unincorporated business, within the meaning and intent of section 703(b) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Saul Saveth, and his wife, Martha Saveth, filed New York State income tax resident returns for 1963 through 1973, but did not file New York State unincorporated business tax returns for said years.

2. On September 29, 1975, the Income Tax Bureau issued three notices of deficiency against petitioner, asserting unincorporated business tax, plus interest, for 1963 through 1973 in the following amounts:

	<u>1963-1966</u>	<u>1967-1970</u>	<u>1971-1973</u>
Unincorporated Business			
Tax	\$ 7,658.62	\$4,439.18	\$2,922.22
Interest	4,583.69	1,710.25	459.36
Total	<u>\$12,242.31</u>	<u>\$6,149.43</u>	<u>\$3,381.58</u>

3. Petitioner, Saul Saveth, was a toy packaging salesman during the years 1963 through 1973. His income for the respective years was as follows:

	<u>1963</u>	<u>1964</u>	<u>1965</u>	<u>1966</u>
Business Income	\$43,845.22	\$68,019.34	\$34,813.61	\$35,876.01
Income from				
Famous Paper Box Co. Inc.	4,424.60	6,452.86	15,238.92	14,477.29
Income from				
Plastic Enterprises Inc.		7,200.00	11,300.00	
Income from				
Thermoformed Plastics Inc.				2,000.00
Total Business Income	<u>\$48,269.82</u>	<u>\$81,672.20</u>	<u>\$61,352.53</u>	<u>\$52,353.30</u>

	<u>1967</u>	<u>1968</u>	<u>1969</u>	<u>1970</u>
Business Income	\$44,829.98	\$31,964.78	\$10,136.07	\$12,941.09
Income from Famous Paper Box Inc.	15,439.66	4,463.27	4,816.07	4,018.23
Income from Westboro Industries Inc.				9,750.00
Total Business Income	<u>\$60,269.64</u>	<u>\$36,428.05</u>	<u>\$14,952.14</u>	<u>\$26,709.32</u>

	<u>1971</u>	<u>1972</u>	<u>1973</u>
Business Income	\$12,256.42	\$ - 0 -	\$ 1,573.45
Income from Famous Paper Box Inc.	3,570.87	2,992.14	
Income from Westboro Industries Inc.	13,000.00	13,250.00	13,000.00
Income from Thermoformed Plastics Inc.		6,000.00	20,800.00
Total Business Income	<u>\$28,827.29</u>	<u>\$22,242.14</u>	<u>\$35,373.45</u>

4. Petitioner was paid wages as Manager of Operations for Westboro Industries, Inc., which operated a golf driving range. Petitioner performed services for said corporation in the evenings and on weekends.

CONCLUSIONS OF LAW

A. That the wages paid by Westboro Industries, Inc. to petitioner, Saul Saveth, were for services rendered as an employee and were not, therefore, subject to unincorporated business tax.

B. That in regard to the other wages paid to petitioner, there was no sworn testimony or evidence presented regarding the direction and control exercised over his activities.

C. That the petition of Saul Saveth is granted to the extent of excluding the salary paid by Westboro Industries, Inc.

from unincorporated business gross income for 1970 through 1973. The Income Tax Bureau is hereby directed to recompute the unincorporated business tax for said years and issue revised notices of deficiency, but that, except as herein granted, the petitions of Saul Saveth are otherwise denied.


DATED: Albany, New York

March 15, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER