

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JACOB SHUFRO

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)~~  
1966, 1967 and 1968

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 24th day of January , 1979 , ~~she~~ served the within  
Notice of Decision by (certified) mail upon Jacob Shufro

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Jacob Shufro  
64-15 Cronwell Crescent  
Forest Hills, NY

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

24th day of January , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
JACOB SHUFRO : AFFIDAVIT OF MAILING  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~(6)~~ 23 of the :  
Tax Law for the Year(s) ~~XXXXXXX~~ :  
1966, 1967 and 1968 :

State of New York  
County of Albany

John Huhn , 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 24th day of January , 1979 , he served the within  
Notice of Decision by (certified) mail upon Brian Sindel, CPA  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Brian Sindel, CPA  
150 Great Neck Road  
Great Neck, NY 11021

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

24th day of January , 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

January 24, 1979

Jacob Shufro  
64-15 Crowell Crescent  
Forest Hills, NY

Dear Mr. Shufro:

Please take notice of the **Notice of Decision**  
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section ~~(9)~~ **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 **four 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 Chyrywat  
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition  
of  
JACOB SHUFRO  
for Redetermination of a Deficiency or  
for Refund of Unincorporated Business  
Tax under Article 23 of the Tax Law for  
the Years 1966, 1967 and 1968.

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DECISION

Petitioner, Jacob Shufro, 64-15 Cromwell Crescent, Forest Hills, New York, 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 1966, 1967 and 1968 (File No. 00109).

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 October 19, 1977 at 10:45 A.M. Petitioner appeared by Brian Sindel, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUES

I. Whether petitioner's income derived from Shuflick, Inc. during 1967 and 1968 was subject to unincorporated business tax.

II. Whether a penalty pursuant to section 685(a) of the Tax Law was properly imposed on petitioner for 1966, 1967 and 1968.

FINDINGS OF FACT

1. Petitioner, Jacob Shufro, timely filed New York State personal income tax returns for 1966, 1967 and 1968. He did not file unincorporated business tax returns for said years.

2. During 1966, 1967 and 1968, petitioner performed services as a labor relations consultant and had income from S. Klein's Department Stores, Alexander's and Orbach's Department Stores. During 1967 and 1968, petitioner also had income from Shuflick, Inc.

3. The Income Tax Bureau conceded that the income received by petitioner from S. Klein's Department Stores constituted salary and bonus income derived from services performed as an employee. It also conceded that said income was not subject to unincorporated business tax and was, therefore, not at issue.

4. The Income Tax Bureau contended that the income derived from services performed by petitioner for Alexander's and Orbach's Department Stores constituted the carrying on of an unincorporated business and that said income was subject to unincorporated business tax. Petitioner conceded that the income derived from services which he performed for Alexander's and Orbach's was subject to unincorporated business tax and was not, therefore, at issue.

5. The Income Tax Bureau contended that the compensation in the form of salary and bonuses received from Shuflick, Inc. was so integrated and interrelated with petitioner's services performed as an independent contractor for Alexander's and Orbach's Department Stores, as to constitute part of an unincorporated business

regularly carried on by petitioner. A Notice of Deficiency was issued January 28, 1974 in the amount of \$5,071.35 in unincorporated business tax, plus \$1,267.84 in penalty (imposed pursuant to section 685(a) of the Tax Law) and \$1,634.43 in interest, for a total due of \$7,973.62.

6. Petitioner was president and 50 percent owner of Shuflick, Inc. A Mr. Flick was vice-president and 50 percent owner of said corporation. There were no other employees. Petitioner was paid on a salary and bonus basis. He was issued a withholding tax statement indicating that income taxes and social security taxes were withheld from his compensation. The income so derived from Shuflick, Inc. was \$7,890.00 in the year 1967 and \$41,800.00 in 1968. He was also provided with a pension plan by the corporation. Shuflick, Inc. maintained an office and paid all expenses incurred by petitioner in its behalf. All business of the corporation was carried on from its office or at their client's place of business.

7. The services performed by petitioner for Shuflick, Inc., Alexander's and Orbach's Department Stores were similar in nature. All said services were performed when needed. Petitioner represented clients in the negotiation of labor contracts with their employees and also in settlements of employee grievances and claims. The services performed for Alexander's and Orbach's Department Stores were performed at their place of business

or from petitioner's home. There was no clear division of petitioner's time between services performed for Shuflick, Inc., for Alexander's or for Orbach's. The services performed for Shuflick, Inc. were not performed on a full-time basis.

8. The Income Tax Bureau conceded that the penalties imposed upon petitioner pursuant to section 685(a) of the Tax Law were improperly imposed, since petitioner relied on a ruling by the Income Tax Bureau in 1955 which held that his income was not subject to unincorporated business tax.

#### CONCLUSIONS OF LAW

A. That the income of petitioner, Jacob Shufro, which was derived from services performed as an employee for Shuflick, Inc. during 1967 and 1968 was subject to unincorporated business tax since it was interrelated and integrated with his activities as an independent contractor and, therefore, constituted part of an unincorporated business regularly carried on by him in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That petitioner acted in good faith and the penalty imposed pursuant to section 685(a) of the Tax Law is waived.

C. That the petition of Jacob Shufro is granted only to the extent of cancelling all penalties. The Income Tax Bureau is

hereby directed to accordingly modify the Notice of Deficiency issued January 28, 1974 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

January 24, 1979

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER