

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

N. Spencer Weiss :

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 1967 - 1969. :

State of New York

County of Albany

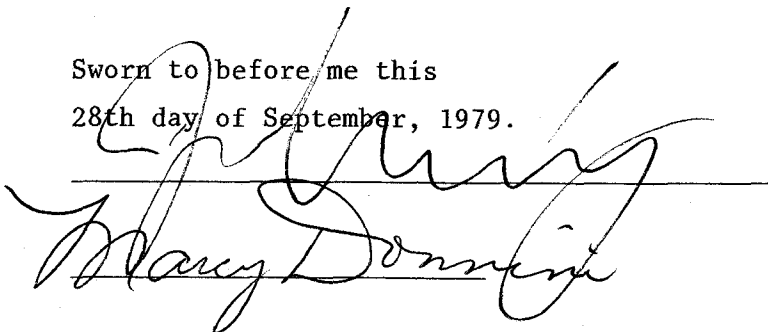
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon N. Spencer Weiss, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

N. Spencer Weiss  
166-25 Powells Cove Blvd.  
Whitestone, NY 11357

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  
28th day of September, 1979.

  
Mary Donnell

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

N. Spencer Weiss :

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State of New York  
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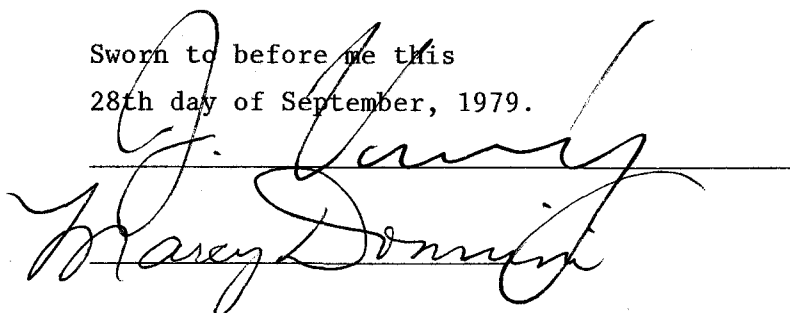
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Doris A. Weiss the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ms. Doris A. Weiss  
166-25 Powells Cove Blvd.  
Whitestone, NY 11357

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  
28th day of September, 1979.



Mary Dominick

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
THOMAS H. LYNCH

JOHN J. SOLLECITO  
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

N. Spencer Weiss  
166-25 Powells Cove Blvd.  
Whitestone, NY 11357

Dear Mr. Weiss:

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", written in a cursive style.

cc: Petitioner's Representative  
Doris A. Weiss  
166-25 Powells Cove Blvd.  
Whitestone, NY 11357  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
N. SPENCER WEISS : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law for :  
the Years 1967, 1968 and 1969. :  
:

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Petitioner, N. Spencer Weiss, 166-25 Powells Cove Boulevard, Whitestone, New York 11357, 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 1967, 1968 and 1969 (File No. 00559).

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 25, 1978 at 10:45 A.M. Petitioner appeared by his wife, Doris A. Weiss. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

#### ISSUE

Whether petitioner's activities as an insurance broker during 1967, 1968 and 1969 constituted the carrying on of an unincorporated business.

#### FINDINGS OF FACT

1. Petitioner, N. Spencer Weiss, timely filed New York State personal income tax returns for 1967, 1968 and 1969, on which he reported his occupation to be that of an insurance broker. Petitioner

also filed unincorporated business tax returns for said years, on which he reported income from Leon Rosenblatt, Inc. ("Rosenblatt"), a general insurance agency. He did not report income from the Union Central Life Insurance Company ("Union") on his unincorporated business tax returns.

2. On April 6, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner for 1968 and 1969. Said Statement imposed unincorporated business tax of \$410.56, plus interest of \$33.24, for a total \$443.80. Petitioner paid the amount shown due on said statement (plus accrued interest), and on September 30, 1971, filed a Claim for Refund on Form IT-113X. On December 28, 1973, the Income Tax Bureau issued a Notice of Disallowance denying the amounts of the refunds which were claimed (\$169.68 for 1968 and \$274.12 for 1969).

3. On May 24, 1971, the Income Tax Bureau issued a Notice of Deficiency against petitioner for 1967, on which it contended that the income derived from services performed on behalf of Union was subject to unincorporated business tax. Said Notice asserted unincorporated business tax of \$188.04, plus interest of \$35.06, for a total due of \$223.10. The Income Tax Bureau also made another adjustment to petitioner's unincorporated business tax return which resulted from a Federal audit change, and which petitioner conceded.

4. Petitioner contended that he was an employee during the years at issue and performed services as such, and that he was not engaged in the carrying on of an unincorporated business.

5. During the years at issue, petitioner operated from the office of Rosenblatt for whom he sold general insurance. He paid Rosenblatt

fixed monthly service charge for desk space and for clerical help. Petitioner's telephone at Rosenblatt's place of business was listed in his own name in the Manhattan telephone directory. He was paid on a commission basis from which no deductions were made, and he was not reimbursed for expenses which he incurred. Petitioner did not submit any evidence as to the degree of Rosenblatt's supervision over his day-to-day activities.

6. Petitioner sold life insurance for Union and for other insurance companies during the years at issue, but gave first preference to Union. He was paid on a commission basis, said commissions being reported on wage and tax statements as "other compensation". Social security tax was the only deduction from his compensation. He was a member of the Union pension plan. Petitioner was not required to work fixed hours for Union, was not under Union's general supervision and was not precluded from performing services for other principals. Petitioner was not reimbursed for expenses which he incurred, nor was there any division of his time between Union and Rosenblatt.

7. Petitioner determined when, where, how, and with whom he would solicit business. He was a registered insurance broker who was licensed by the State of New York. He earned commissions from other brokers and maintained an office in his home where he transacted business. He deducted expenses on Federal Schedule "C" and had his own business letterhead. In 1967 he earned \$5,078.14 from the sale of general insurance on behalf of Rosenblatt, and \$7,235.10 from the sale of life insurance on behalf of Union. In 1968 the amounts he earned were \$7,562.68 and \$3,302.45, respectively, and in 1969, the amounts were \$8,965.80 and \$4,023.05, respectively.

CONCLUSION OF LAW

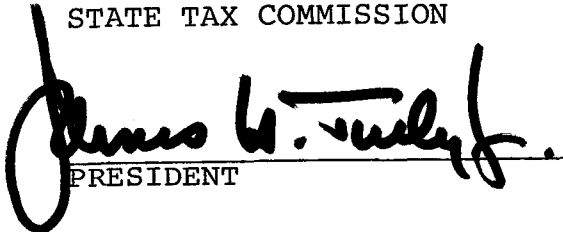
A. That petitioner, N. Spencer Weiss, was engaged in the carrying on of an unincorporated business during 1967, 1968 and 1969, within the meaning and intent of section 703(a) of the Tax Law. His activities did not constitute services as an employee under section 703(b) of the Tax Law.

B. That the petition of N. Spencer Weiss is denied and the Notice of Deficiency issued May 24, 1971 for 1967 is sustained, together with such additional interest as may be lawfully owing. The Notice of Disallowance issued on December 28, 1973 for 1968 and 1969 is hereby sustained.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

REQUEST FOR BETTER ADDRESS

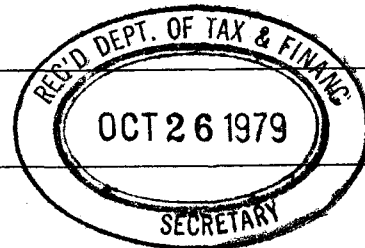
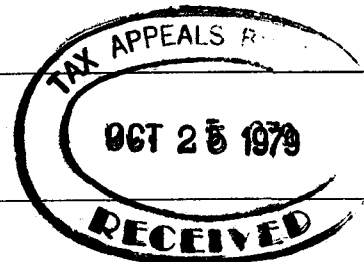
Requested by <i>Lynn Luce</i>	Unit <i>TAB Rm 107 Bldg 9</i>	Date of Request <i>10/22/79</i>
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Please find most recent address of taxpayer described below; return to person named above.

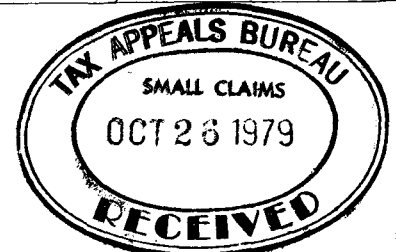
Social Security Number <i>133-16-2880</i>	Date of Petition <i>10/6/75 - rec'd</i>
Name <i>N. SPENCER WEISS</i>	
Address <i>166-25 POWELLS COVE BLVD. WHITESTONE, NY 11357</i>	

## Results of search by Files

<input type="checkbox"/> New address:	
<input checked="" type="checkbox"/> Same as above, no better address (77)	
<input checked="" type="checkbox"/> Other:	<i>0-78#</i>



Searched by <i>F. F. ... D. Royal</i>	Section <i>MS MT</i>	Date of Search <i>10-24-79 10-24-79</i>
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PERMANENT RECORDFOR INSERTION IN TAXPAYER'S FOLDER



TA-26 (4-76) 25M

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

10/16/79  
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CLAIM CHECK NO.

352048

☐ HOLD

DATE

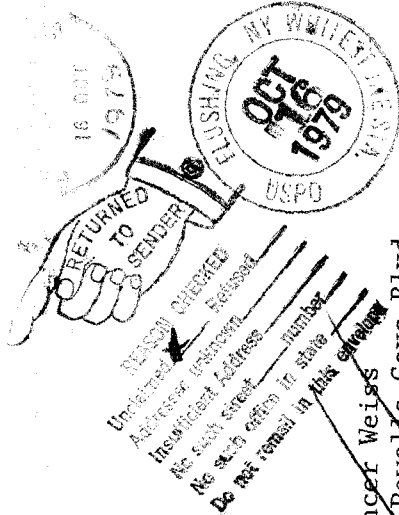
9-24  
1ST NOTICE

2ND NOTICE

10-4  
RETURN

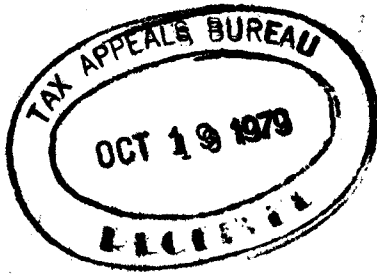
10-14

Detached from  
PS Form 3840-A  
Feb. 1978



N. Spencer Weiss  
166-25 Powells Cove Blvd.  
Whitestone, NY 11357

*Handwritten signature/initials*



*Small Chas.*





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

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT  
MILTON KOERNER  
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cc: Petitioner's Representative  
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166-25 Powells Cove Blvd.  
Whitestone, NY 11357  
Taxing Bureau's Representative

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CONCLUSION OF LAW

A. That petitioner, N. Spencer Weiss, was engaged in the carrying on of an unincorporated business during 1967, 1968 and 1969, within the meaning and intent of section 703(a) of the Tax Law. His activities did not constitute services as an employee under section 703(b) of the Tax Law.

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DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

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