

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOHN GORDON

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)~~ ~~or Period(s)~~ 1972.:  
~~xxxxxx~~

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 14th day of February , 1979 , ~~she~~ served the within  
Notice of Decision by (certified) mail upon John Gordon  
~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: John Gordon  
111 East 85th Street, Apt. 7-F  
New York, New York 10028

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

14th day of February , 1979

Marilyn J. Papineau

John Huhn



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

February 14, 1979

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

John Gordon  
111 East 85th Street, Apt. 7-F  
New York, New York 10028

Dear Mr. Gordon:

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 ~~(a)~~ **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,

Joseph Chyrywaty  
Hearing Examiner

cc: ~~Partnership Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOHN GORDON	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1972.	:	

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Petitioner, John Gordon, 111 East 85th Street (Apt. 7-F), New York, New York 10028, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1972 (File No. 14491).

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 March 10, 1978 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

#### ISSUE

Whether petitioner's activities during 1972 constituted the carrying on of an unincorporated business, within the meaning and intent of section 703(a) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, John Gordon, timely filed a New York State personal income tax return for 1972, on which he reported business income derived from services performed as a consultant. He did not file an unincorporated business tax return for said year.

2. The Income Tax Bureau contended that the income derived from petitioner's activities as a consultant was subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency to petitioner on February 24, 1976 for \$1,289.92 in unincorporated business tax, plus \$166.15 in penalty (imposed pursuant to section 685(c) of the Tax Law) and \$276.97 in interest, for a total of \$1,733.04.

3. During 1972 petitioner was employed by Equity Management Corporation (hereinafter "Equity") as its vice-president. Equity was a member of the New York and other stock exchanges and was a subsidiary of Halle and Stieglitz, Filor Bullard, Inc. (hereinafter "Halle"). Petitioner was paid a salary of \$38,333.41. His duties involved advising clients as to investments. He had two other sources of income during the year at issue.

4. For over 25 years, petitioner earned a yearly fee of \$5,000.00 from a widow for whom he handled family funds and to whom he gave advice on personal matters. He performed the limited

duties which were involved from his home. He reported the income so derived each year on Federal Schedule "C" and took deductions against the income for expenses incurred.

5. Petitioner's other source of income during 1972 was derived from his participation in a special "one shot" deal which resulted in a finder's fee. He contended that the services he performed to consummate the special deal were rendered in his capacity as an employee. Petitioner further contended that the president of Equity had an agreement with Halle to the effect that any particular business that he brought in that provided special income from a special deal (not involving ordinary income), would be divided equally with Halle. Petitioner had an agreement with the president of Equity to divide the president's share of the special deal income equally with him.

6. Petitioner contended that through a client of Equity, Equity's president and petitioner discovered and brought in the special deal to Halle. It involved Equity's finding an American firm to handle and develop a patented process for a Canadian corporation. The president of the Canadian firm compensated Halle by giving it 125,000 shares of the firm's stock, with an option to buy it back. Subsequently, the president of the Canadian firm agreed to buy back the stock at a large discount. Halle gave

the stock to the president of the Canadian firm who wrote out checks to Halle, to the president of Equity, to an attorney and to petitioner.

7. Petitioner contended that he worked with the president of Equity as Halle's representatives. They made necessary arrangements, worked out details and met with the parties involved.

8. Petitioner was issued a wage and tax statement for 1972 by Halle, on which his wage income was reported. Petitioner's compensation for the special deal was not included on said statement. Petitioner filed Federal Schedule "C," on which he included the special deal income and the yearly \$5,000.00 fee. On Federal Schedule "C," petitioner claimed deductions for expenses incurred in connection with the special deal which were not reimbursed by his principal.

#### CONCLUSIONS OF LAW

A. That the income derived from the isolated transaction involving the special deal during 1972 (the finder's fee) was not derived from the carrying on of an unincorporated business, in accordance with the meaning and intent of section 703(a) of the Tax Law.

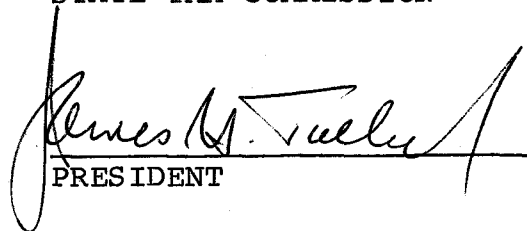
B. That the \$5,000.00 yearly-fee income derived from petitioner's activities as a consultant was derived from the carrying on of an unincorporated business; therefore, said

income was subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) of the Tax Law. However, the amount of income derived was not sufficient to produce a tax.

C. That the petition of John Gordon is granted to the extent that the Notice of Deficiency is modified to cancel the deficiency in unincorporated business tax and related interest; that the Income Tax Bureau is hereby directed to recompute the penalty under section 685(c) of the Tax Law by basing same solely on petitioner's failure to file a declaration of estimated income tax.

DATED: Albany, New York  
February 14, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER