

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Morris B. & Rose R. Sussman :

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 1971-1973. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

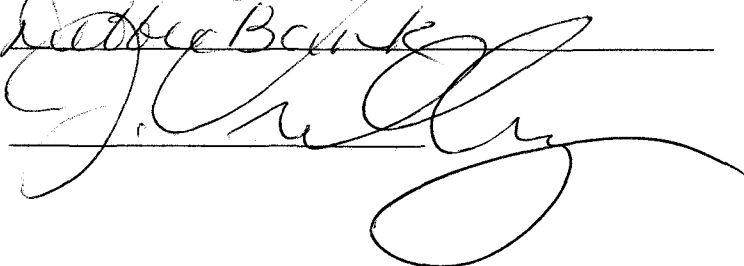
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Morris B. & Rose R. Sussman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Morris B. & Rose R. Sussman
20 S. Hollywood Avenue
Gloversville, NY 12075

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
19th day of September, 1980.



STATE OF NEW YORK
STATE TAX COMMISSION

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of
Morris B. & Rose R. Sussman :
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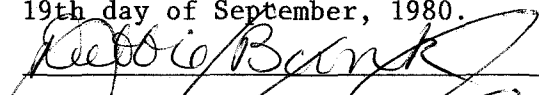
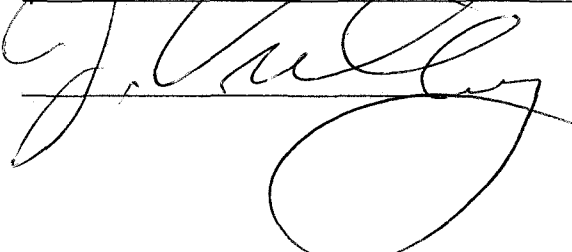
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Sol Rosenberg the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Sol Rosenberg
Gryphon Bldg.
Rutland, VT 05701

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
19th day of September, 1980.

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

September 19, 1980

Morris B. & Rose R. Sussman
20 S. Hollywood Avenue
Gloversville, NY 12075

Dear Mr. & Mrs. Sussman:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Sol Rosenberg
Gryphon Bldg.
Rutland, VT 05701
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
| of | : | |
| MORRIS B. SUSSMAN | : | |
| and | : | DECISION |
| ROSE R. SUSSMAN | : | |
| for Redetermination of a Deficiency or | : | |
| for Refund of Unincorporated Business | : | |
| Tax under Article 23 of the Tax Law for | : | |
| the Years 1971 through 1973. | : | |

Petitioners, Morris B. Sussman and Rose R. Sussman, 20 S. Hollywood Avenue, Gloversville, New York 12075, 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 through 1973 (File No. 14096).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building #9, Albany, New York, on January 29, 1980 at 1:00 P.M. Petitioner Morris B. Sussman appeared with Sol Rosenberg, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Barry M. Bresler, Esq., of counsel).

ISSUE

Whether petitioner Morris B. Sussman was an employee of New York State Sheriff's Association, Inc. during the years 1971, 1972 and 1973, or were the services he rendered for said association performed as an independent contractor and the income therefrom subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Morris B. Sussman and Rose R. Sussman, filed New York State income tax resident returns for 1971, 1972 and 1973. They did not file unincorporated business tax return for said years.

2. On January 26, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioners for 1971 through 1973, imposing unincorporated business tax of \$1,486.92, plus penalties of \$607.36 and interest of \$295.22, for a total due of \$2,389.50. The Notice was issued on the grounds that the activities of petitioner Morris B. Sussman constituted the carrying on of an unincorporated business and the income derived therefrom was subject to unincorporated business tax.

3. In an agreement between the New York State Sheriff's Association, Inc. (hereinafter "association") and Morris B. Sussman, the association granted petitioner the exclusive right to solicit, in the State of New York, advertising for the association's annual official publication. Petitioner agreed to solicit advertising for said publication and to edit, print, publish and distribute copies of the publication. He also agreed that all costs and expenses of said publication would be borne by him.

4. All advertisers purchasing space in the association's official publication were instructed to send their monies to the association. The association would retain thirty percent of the advertising monies and remit to petitioner the remaining seventy percent. The association had the unqualified right to decide what advertisement of any person, firm or corporation would appear in its official publication.

5. The agreement further provided that the association was to be held harmless and indemnified for all claims, damages or causes of action for damages arising out of or incident to the soliciting of advertising, as well as the editing, printing, publishing and/or distributing the association's official publication.

6. At the end term of the agreement, all materials of every kind and nature used or intended for use in the official publication became the sole property of the association.

7. Petitioner contended that because of the immensity of the job, there was no way he could work for any other principals.

8. Petitioner maintained an office in his home and had his own distinctive letterhead. Petitioner hired independent contractors to assist him in his work.

9. The accountant relied on section 703(f) of the Tax Law for not filing the unincorporated business tax returns.

CONCLUSIONS OF LAW

A. That the activities of petitioner Morris B. Sussman during the years 1971, 1972 and 1973 were performed as an independent agent rather than an employee; therefore, petitioner was engaged in the carrying on of an unincorporated business during the years 1971, 1972 and 1973 in accordance with the meaning and intent of section 703 of the Tax Law.

B. That petitioner Morris B. Sussman's failure to file unincorporated business tax returns for the years at issue was due to reasonable cause and not due to willful neglect; therefore, all penalties pursuant to sections 685(a) (1) and (2) of the Tax Law are cancelled.

C. That the petition of Morris B. Sussman and Rose R. Sussman is granted only to the extent that all penalties are cancelled. The Audit Division is hereby directed to modify the Notice of Deficiency issued January 26, 1976; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION

James B. Kelly
PRESIDENT

Thomas H. ...
COMMISSIONER

Frank R. Koenig
COMMISSIONER

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