

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Harold G. Williams, Jr. :

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 1968 - 1972. :

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 2nd day of January, 1980, he served the within notice of Decision by certified mail upon Harold G. Williams, Jr., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

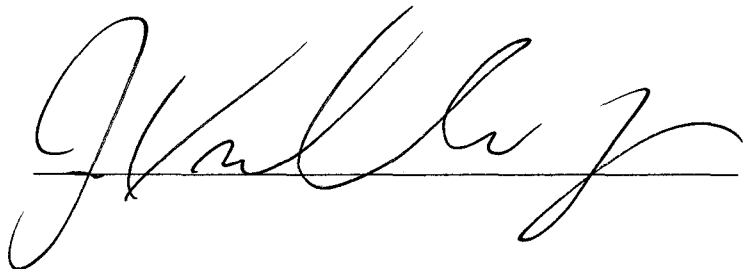
Harold G. Williams, Jr.  
Griswold Rd.  
Rye, NY 10580

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  
2nd day of January, 1980.

Joanne Knapp



STATE OF NEW YORK  
STATE TAX COMMISSION

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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 2nd day of January, 1980, he served the within notice of Decision by certified mail upon Edmund C. Grainger, Jr. 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. Edmund C. Grainger, Jr.  
O'Brien, Raftery, Rosenbloom & Grainger  
501 Fifth Ave.  
New York, NY 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  
2nd day of January, 1980.

Joanne Knapp

J. Vredenburg

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

January 2, 1980

Harold G. Williams, Jr.  
Griswold Rd.  
Rye, NY 10580

Dear Mr. Williams:

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  
Edmund C. Grainger, Jr.  
O'Brien, Raftery, Rosenbloom & Grainger  
501 Fifth Ave.  
New York, NY 10017  
Taxing Bureau's Representative

## STATE TAX COMMISSION

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 17, 1977 at 3:00 P.M. Petitioner appeared by O'Brien, Raftery, Rosenbloom & Grainger (Edmund C. Grainger, Jr. Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

## ISSUE

Whether petitioner's activities as a shipper's broker-agent for six affiliated corporations, of which he was a principal and officer during the subject years, constituted the carrying on of an unincorporated business, within the meaning of Article 23 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Harold G. Williams, Jr., and his wife filed New York State combined income tax returns for 1968 through 1972, inclusive, but did not file New York State unincorporated business tax returns for said years.

2. On January 27, 1975, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, imposing unincorporated business tax on the income received by him as a commission agent. This was pursuant to a Tax Commission decision dated April 4, 1974 for 1965, 1966 and 1967. Accordingly, the Bureau issued two notices of deficiency in the aggregate sum of \$13,722.22.

3. Petitioner timely filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes for the subject years, sworn to April 16, 1975. Said petition challenged the imposition of this tax on purported "other compensation" in the form of a broker's "discount," and contended that such "other compensation" was a "salary" for services rendered as an officer in the business of the corporations involved.

4. Petitioner's business accountant testified on petitioner's behalf to the effect that petitioner was the principal stockholder and officer of the six or seven affiliated corporations involved in the steamship cargo transport business, and that all were located at the same address. Petitioner received an income from one of these affiliated corporations in the form of wages which were the subject of withholding. The deficiency herein does not include this salary income.

5. Petitioner, Harold G. Williams, Jr., received additional income or "other compensation" in the form of a broker's commission. This was for services rendered to one or more of these affiliated corporations, as a broker who obtained cargoes and steamship charters as part of his regular business. These commissions took the form of a "discount" from the set figure given the charterer, to be paid by the (cargo) owner directly to the broker(s) who participated in the effort. No withholding was taken on this additional income, and he himself characterized it as "commissions" and his capacity as being that of an "agent."

6. Petitioner's activities were identical for these years and for the years 1965 to 1968, wherein the prior decision of the Tax Commission was issued.

#### CONCLUSIONS OF LAW

A. That the prior decision of the Tax Commission which found that petitioner's activities as a "commission agent" for these affiliated steamship transport companies and the income derived therefrom was subject to unincorporated business tax, becomes the Law of the Case. Petitioner has failed to show by documentary or other substantial evidence that the facts which supported that decision differ from the facts determined for the years currently at issue.

B. That petitioner still regards himself to be and is, in fact, an independent contractor who regularly conducts the business of acting as a steamship charter and cargo broker; that the income derived therefrom, regardless of whether characterized as "commissions" or "discounts," is subject to unincorporated business tax. The fact that he is also an

officer and principal stockholder of the corporations which pay the "commissions" is of no consequence, as long as the services rendered are part of his regular business (See Schirrmeister's Estate v. State Tax Commission, 7 N.Y. 2d. 708; C.C.H. N.Y. Tax Law - Chapt. 60, Art. 23, Uninc. Bus. Tax, par. 19-507).

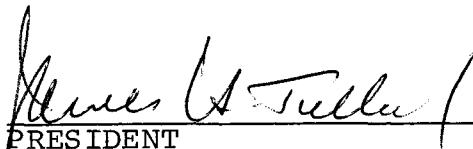
C. That the penalty is clearly justified, particularly in light of the prior determination of the State Tax Commission.

D. That the petition of Harold G. Williams, Jr. is denied and the notices of deficiency issued January 27, 1975 are hereby sustained.

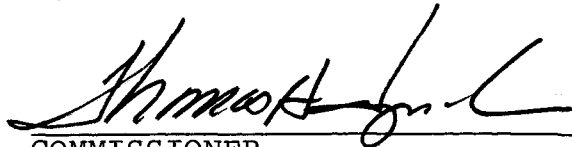
DATED: Albany, New York

**JAN 2 1980**

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER