

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Julius Salzbank :  
: 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 Year 1973 :

\_\_\_\_\_  
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 1st day of May, 1981, he served the within notice of Decision by certified mail upon Julius Salzbank, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Julius Salzbank  
40 Hamilton Dr.  
Roslyn, NY 11576

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  
1st day of May, 1981.

Carrie P. Haglund

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Julius Salzbank :

: 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 Year 1973 :

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 1st day of May, 1981, he served the within notice of Decision by certified mail upon Morton Silberblatt 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. Morton Silberblatt  
370 First Ave.  
New York, NY 10010

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  
1st day of May, 1981.

*Gina A. Hegeland*

*J. Vredenburg*

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

May 1, 1981

Julius Salzbank  
40 Hamilton Dr.  
Roslyn, NY 11576

Dear Mr. Salzbank:

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  
Morton Silberblatt  
370 First Ave.  
New York, NY 10010  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JULIUS SALZBANK	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Year 1973.	:	

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Petitioner, Julius Salzbank, 40 Hamilton Drive, Roslyn, New York 11576, 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 1973 (File No. 18636).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 26, 1979 at 9:15 A.M. Petitioner appeared by Morton Silberblatt, CPA. The Audit Division appeared by Peter Crotty, Esq. (J. Ellen Purcell, Esq., of counsel).

#### ISSUE

Whether services performed by petitioner as an employee of Suvla Sales Corp. were so interrelated and integrated with his unincorporated business activities as to cause the compensation received from said corporation to be included in the gross income of the unincorporated business.

#### FINDINGS OF FACT

1. Petitioner, Julius Salzbank, timely filed a 1973 resident income tax return and reported therein wage income of \$44,897.69 from Alvua Sales Inc. and \$58,000.00 from Suvla Sales Corp. (hereinafter "Suvla"). Attached to the personal income tax return was petitioner's 1973 unincorporated business tax

return which reported Net Income from Business of \$27,585.17. Petitioner conducted his unincorporated business under the name of Simplot Products Co. (hereinafter "Simplot") and operated as a wholesaler of frozen potatoes.

2. On February 28, 1977 the Audit Division issued a Notice of Deficiency against petitioner for additional unincorporated business tax of \$3,030.50, plus interest. Said deficiency was based on a field audit where it was determined that "Services performed for Suvla Sales Corporation...are deemed to be performed in furtherance of your unincorporated business (Simplot) and, therefore, subject to unincorporated business tax."

3. Petitioner's unincorporated business, Simplot, was involved solely in the wholesaling of brand name frozen potatoes to institutions and food distributors in the New York metropolitan area. Simplot owned and maintained an inventory, extended credit, delivered the product and billed the customer. There were no employees of Simplot since payment was made to an outside firm for sales representation, bookkeeping and administration.

4. Suvla Sales Corp. was a New York corporation engaged in business nationwide as a food broker at the retail and institutional levels. Suvla did not act as a broker for any potato products nor did it own or maintain an inventory, extend credit, or bill customers. Suvla generated its income solely from commissions. Petitioner was the sole stockholder of Suvla and was the only officer who drew a substantial salary. Federal, New York State and social security taxes were withheld by Suvla from the compensation paid to petitioner. The corporation, during 1973, had two full-time employees and one part-time employee.

5. Simplot and Suvla each maintained its own set of books, as well as separate bank accounts. There was no co-mingling of funds or allocation of expenses between the two firms.

6. Petitioner, Julius Salzbank, performed services simultaneously for Simplot and Suvla with no clear division of time between the two entities.

CONCLUSIONS OF LAW

A. That subdivision (b) of section 703 of the Tax Law provides in part, that:

"The performance of services by an individual as an employee or... officer...of a corporation...shall not be deemed an unincorporated business, unless such services constitute part of a business regularly carried on by such individual."

In Matter of Naroff v. Tully, 55 A.D.2d 775, the court held:

"The clear purpose of the proviso in subdivision (b) is to prevent an individual entrepreneur from sheltering from the unincorporated business tax income which derives from the conduct of his unincorporated business in the form of salaries for services as an employee or officer of the corporate entities, in a situation where the corporate entities exist primarily to advance the business purposes of the unincorporated entity and do not have an independent and unrelated business purpose."

B. That the services rendered by petitioner, Julius Salzbank, during the year 1973, as an officer and employee of Suvla Sales Corp., were not so inter-related and integrated with his unincorporated business activities as to constitute part of a business regularly carried on by him and, therefore, the salary received from said corporation was not subject to unincorporated business tax (section 703(b) of the Tax Law).

C. That the petition of Julius Salzbank is granted and the Notice of Deficiency issued February 28, 1977 is hereby cancelled.

DATED: Albany, New York  
MAY 01 1981

STATE TAX COMMISSION

*James A. Tully*  
PRESIDENT

*Thomas A. Tully*  
COMMISSIONER

*Francis R. Koenig*  
COMMISSIONER