

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Bill Dean :  
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 1974. :

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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Bill Dean, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

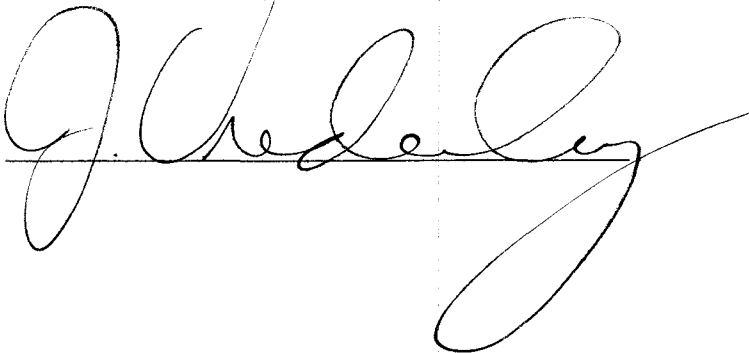
Bill Dean  
166 41 Powells Cove Blvd.  
Whitestone, NY 11357

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  
4th day of August, 1982.





STATE OF NEW YORK

STATE TAX COMMISSION

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of :  
Bill Dean :

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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 :  
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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 4th day of August, 1982, he served the within notice of Decision by certified mail upon Leonard Bailin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leonard Bailin  
299 Broadway  
New York, NY

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  
4th day of August, 1982.

*Annice A. Hayslund*

*Jay Vredenburg*

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

August 4, 1982

Bill Dean  
166 41 Powells Cove Blvd.  
Whitestone, NY 11357

Dear Mr. Dean:

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  
Law Bureau - Litigation Unit  
Albany, New York 12227  
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Leonard Bailin  
299 Broadway  
New York, NY  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
BILL DEAN  
for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Year 1974.

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DECISION

Petitioner, Bill Dean, 166-41 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 year 1974 (File No. 22459).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 6, 1981 at 9:15 A.M. Petitioner appeared by Leonard Bailin, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill, Esq., of counsel).

#### ISSUES

I. Whether petitioner's activities as an employee of Sky Books International, Inc. were so integrated and interrelated with his activities on behalf of his unincorporated business, Bill Dean Associates, so as to constitute a part of the unincorporated business during 1974.

II. Whether penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law were properly asserted against petitioner.

FINDINGS OF FACT

1. Petitioner, Bill Dean, timely filed a New York State Income Tax Resident Return for the year 1974 whereon he reported wage income of \$15,600.00 derived from his wholly-owned corporation, Sky Books International, Inc. Additionally, he reported a business loss of \$666.00 from his unincorporated book sale business. He did not file a New York State unincorporated business tax return for said year.

2. On February 18, 1977 the Audit Division issued a Statement of Audit Changes to petitioner wherein, pursuant to a Schedule of Audit Adjustments attached thereto, it held that "Since it has been determined that there is no distinction between your activities as an employee and officer of Sky Books International, Inc. and your activities as the sole proprietor of Bill Dean Assoc., your salary from Sky Books is subject to the N.Y.S U.B.T." Based on such holding, petitioner's salary income was combined with his unincorporated business net loss and reduced by appropriate deductions, credits and exemptions resulting in unincorporated business taxable income of \$6,867.20. Accordingly, a Notice of Deficiency was issued against petitioner on April 14, 1978 asserting unincorporated business tax of \$334.61, penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for failure to file an unincorporated business tax return and failure to pay the tax determined to be due, respectively of \$135.51, plus interest of \$85.25, for a total due of \$555.37.

3. During 1974 petitioner was engaged in the activity of selling books and magazines of a military nature. He operated through two entities as follows:

A. - Bill Dean Associates - petitioner's unincorporated business, through which all purchases of inventory were made and all sales to other dealers were transacted and,

B. - Sky Books International, Inc. - the wholly-owned corporation through which petitioner drew his salary. All mail order sales were transacted through, and all payroll expenses were charged to this entity.

4. Petitioner operated both of the above stated businesses without a clear division of time devoted to each. Both entities shared the same office facilities, storage facilities and employees. Inventory purchased solely through Bill Dean Associates was sold by both entities and the employees whose wages were charged to Sky Books International, Inc. performed services for Bill Dean Associates as well.

5. Reasonable cause for not filing a 1974 unincorporated business tax return was alleged. Petitioner's representative, who has been his tax preparer for many years, including the year at issue herein, advised petitioner that such return was not required to be filed based on the fact that Bill Dean Associates showed a loss for 1974 and he believed that petitioner's salary income was not subject to such tax.

#### CONCLUSIONS OF LAW

A. That where the individual rendering personal services as an employee, officer, director or fiduciary is also actively engaged in his own independent business without a clear division of time...such services will be deemed to constitute part of an unincorporated business regularly carried on by the individual. (20 NYCRR 203.10(d))

B. That the services rendered by petitioner, Bill Dean, as an employee of Sky Books International, Inc. were so integrated and interrelated with his

unincorporated business activities for Bill Dean Associates so as to constitute part of the unincorporated business. As such, the salary derived by petitioner as an employee was not exempt from the imposition of unincorporated business tax, within the meaning and intent of section 703(b) of the Tax Law.

C. That petitioner's activities engaged in as an employee of Sky Books International, Inc. constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and the income derived therefrom is subject to the unincorporated business tax pursuant to section 701 of the Tax Law.

D. That the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are hereby abated since petitioner has established reasonable cause.

E. That the petition of Bill Dean is granted to the extent provided in Conclusion of Law "D" supra; and that except as so granted, said petition is in all other respects denied.

F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated April 14, 1978 to be consistent with the decision rendered herein.

DATED: Albany, New York

AUG 04 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER