

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL J. WEISS

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1962 and :
1963.

State of New York
County of Albany

Lynn Wilson , 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 30th day of March , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon SAMUEL J.

WEISS (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Samuel J. Weiss
215 West 90th Street
New York, New York 10024

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

30th day of March , 1972.

Martha Funness

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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SAMUEL J. WEISS

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OF NOTICE OF DECISION
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a Refund of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1962 and :
1963

State of New York
County of Albany

Lynn Wilson , 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 30th day of March , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon NATHAN SHIELDS, C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Nathan Shields, C.P.A.
225 West 34th Street
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

30th day of March , 1972

Martha Furrow

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 30, 1972

Samuel J. Weiss
215 West 90th Street
New York, New York 10024

Dear Mr. Weiss:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
690 & 722 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Paul B. Coburn
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
SAMUEL J. WEISS : DECISION
for Redetermination of Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law :
for the Years 1962 and 1963. :

Petitioner, Samuel J. Weiss, has filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1962 and 1963. (File No. 3-8109596). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on May 20, 1971, at 9:30 A.M. Rosen, Herzog & Teitelbaum, Esqs. (Marvin Rosen, Esq., of Counsel) and Haas, Shields & Selvin, C.P.A.'s, by Nathan Shields, C.P.A., appeared for petitioner. Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel) appeared for the income tax Bureau.

ISSUE

Did petitioner, Samuel J. Weiss's unincorporated business, Universal Window Cleaning Co., constructively receive \$27,054.96 in income during the year 1963?

FINDINGS OF FACT

1. Petitioner, Samuel J. Weiss, and his wife filed a New York State combined income tax return for the year 1963. He also filed a New York State unincorporated business tax return for the year 1963.

2. On May 2, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Samuel J. Weiss. It imposed for the year 1962 additional personal income tax in the sum of \$49.24 and additional unincorporated business tax in the sum of \$16.00. These adjustments are not being contested by petitioner. It further imposed for the year 1963 additional personal income tax on understated savings bank interest in the sum of \$153.78, and auto expenses deemed personal in the sum of \$200.00, and additional unincorporated business tax on sale of good will incorrectly reported in the sum of \$1,310.00, and auto expenses deemed personal in the sum of \$200.00. These adjustments are not being contested by petitioner. It also imposed additional personal income tax and unincorporated business tax for the year 1963 on \$27,054.90 of income alleged to have been constructively received by petitioner's unincorporated business. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$4,366.80.

3. Petitioner, Samuel J. Weiss, was the owner and sole proprietor of Universal Window Cleaning Co. The company was engaged in the business of providing window and general cleaning services for commercial establishments throughout New York City. He operated the business as a sole proprietorship from 1938 until June 30, 1963. On July 1, 1963, petitioner formed a wholly owned New York corporation known as Universal General Cleaning, Inc. On said date it acquired all of the assets and assumed all of the liabilities of Universal Window Cleaning Co. After July 1, 1963,

the corporation continued to operate the business in the same manner as when it had been operated by the sole proprietorship. The individual proprietorship had gross receipts of \$232,063.40 for the period from January 1, 1963 through June 30, 1963. Income was reported on a cash receipts basis and expenses were reported on an accrual basis. It was the company policy to deposit large checks immediately upon receipt.

4. Prior to July 1, 1963, Universal Window Cleaning had performed cleaning services for Bankers Trust Company, Schlange Brothers, Jewish Child Care Center and two other firms. These firms were billed for the services rendered prior to said date. Payment for these services was received after July 1, 1963. The checks were deposited in the bank accounts of Universal General Cleaning, Inc. The amounts received were reflected as income on the books and records of the corporation. The amounts received were \$21,032.32 from Bankers Trust Company, \$2,500.00 from Schlange Brothers, \$3,452.73 from Jewish Child Care Center, and \$69.85 from two other small accounts, making a total of \$27,054.90.

CONCLUSIONS OF LAW

A. That payments of accounts receivable totaling \$27,054.90 received after July 1, 1963, and deposited to the account of Universal General Cleaning, Inc. were not constructively received by petitioner, Samuel J. Weiss's unincorporated business, Universal Window Cleaning Co., and therefore said income was not subject to New York personal income or unincorporated business tax.

B. That the petition of Samuel J. Weiss is granted to the extent of reducing additional personal income tax due for the year 1963 from \$2,740.77 to \$35.28, and of reducing additional unincorporated business tax due for the year 1963 from \$1,079.74 to \$48.32, and the Notice of Deficiency issued May 2, 1966 is reduced from \$4,366.80 to \$171.03 together with such interest as may be due from May 2, 1966, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
March 30, 1972.

STATE TAX COMMISSION

Norman Gullman

COMMISSIONER

Bruce Maxley

COMMISSIONER

Milton Korman

COMMISSIONER