

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HENRY HERRMANN AND SOPHIE HERRMANN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income & Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1971 & 1972.

State of New York
County of Albany

John Huhn, 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 13th day of December, 1977, she served the within

Notice of Decision by (certified) mail upon Henry Herrmann &

Sophie Herrmann ~~(representative of)~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Henry Herrmann & Sophie Herrmann
45 Neck Path
East Hampton, New York 11937

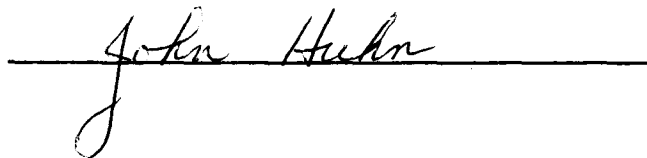
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of December, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

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1971 & 1972

State of New York
County of Albany

John Huhn

, 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 13th day of December , 1977, she served the within

Notice of Decision

by (certified) mail upon Sigmund Balaban, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

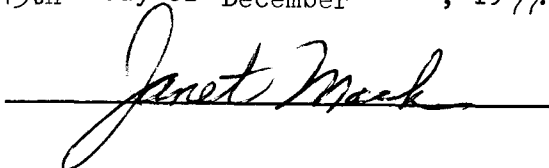
as follows: Sigmund Balaban, CPA
37 Wall Street
New York, New York 10005

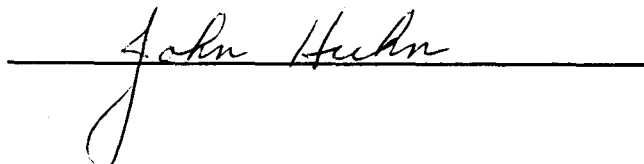
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

13th day of December , 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
December 13, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Henry Herrmann & Sophie Herrmann
45 Neck Path
East Hampton, New York 11937

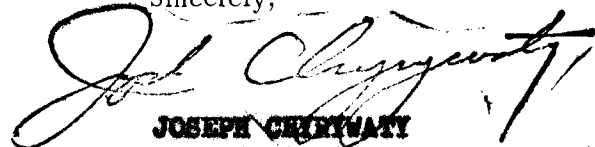
Dear Mr. & Mrs. Herrmann:

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) **690 & 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


JOSEPH CHIRIVATI
HEARING OFFICER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
HENRY HERRMANN AND SOPHIE HERRMANN : DECISION
for Redetermination of a Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law :
for the Years 1971 and 1972. :
:

Petitioners, Henry Herrmann and Sophie Herrmann, residing at 45 Neck Path, East Hampton, New York 11937, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1971 and 1972 (File No. 11735).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 20, 1976 at 2:45 P.M. The petitioners appeared by Sigmund Balaban, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul Rosenkranz, Esq., of counsel).

ISSUES

I. Whether the income received by petitioner Henry Herrmann as a commission salesman and shipping advisor during the years 1971 and 1972 was subject to unincorporated business tax.

II. Whether petitioners, Henry Herrmann and Sophie Herrmann, are liable for penalties for underestimation of both personal income tax for the year 1971 and unincorporated business tax for the years 1971 and 1972.

FINDINGS OF FACT

1. During the years 1971 and 1972, petitioner Henry Herrmann was a commission salesman and director of American Union Transport, Inc., and also a shipping advisor for Parsons and Whittemore, Inc.

2. Petitioners, Henry Herrmann and Sophie Herrmann, filed New York State income tax returns for the years 1971 and 1972. Petitioner Henry Herrmann did not file unincorporated business tax returns for said years.

3. Petitioner Henry Herrmann did not pay estimated income tax for the year 1971, nor did he pay estimated unincorporated business tax for the years 1971 and 1972.

4. On November 24, 1975, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$4,025.21 against petitioners, Henry Herrmann and Sophie Herrmann, imposing unincorporated business tax upon the income petitioner Henry Herrmann received from American Union Transport, Inc. and from Parsons and Whittemore, Inc., and also penalties for underestimation of both personal income tax for the year 1971 and unincorporated business tax for the years 1971 and 1972.

5. For the years 1942 through 1968, petitioner Henry Herrmann was an executive and a director of American Union Transport, Inc. During 1968 he resigned from these positions.

6. During 1970 petitioner Henry Herrmann was reinstated as a director of American Union Transport, Inc. and became a commission salesman for said corporation.

7. During 1971 and 1972, in addition to his activities as a director and commission salesman of American Union Transport, Inc., petitioner Henry Herrmann was engaged by Parsons and Whittemore, Inc. as a shipping consultant.

8. Parsons and Whittemore, Inc. was a customer of American Union Transport, Inc. and Mr. Herrmann's involvement with said corporation was considered beneficial to both.

9. Said corporations did not withhold Federal and state withholding taxes or social security tax from the commissions and fees paid to him.

10. Although petitioner Henry Herrmann used his home as an office, both of the corporations by whom he was engaged supplied him with an office and secretary.

11. Petitioner Henry Herrmann reported directly to the corporate officers of American Union Transport, Inc. and was under its supervision and control.

CONCLUSIONS OF LAW

A. That petitioner Henry Herrmann was an employee of American Union Transport, Inc. during the years 1971 and 1972. Therefore, the income derived from his activities as a commission salesman for said corporation was not subject to unincorporated business tax.

B. That petitioner Henry Herrmann did not sustain the burden of proof required to substantiate that he was an employee of Parsons and Whittemore, Inc. Therefore, the income received by petitioner Henry Herrmann from Parsons and Whittemore, Inc. during the years 1971 and 1972 is subject to unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

C. That petitioner Henry Herrmann is liable for penalties for the underestimation of both personal income tax for the year 1971 and unincorporated business tax for the years 1971 and 1972, modified to conform with the Conclusions of Law stated herein, in accordance with the meaning and intent of sections 685(c) and 722 of the Tax Law.

D. That the petition of Henry Herrmann and Sophie Herrmann is granted to the extent indicated above; that the Income Tax Bureau is instructed to accordingly modify the Notice of Deficiency issued November 24, 1975 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

December 13, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER