

STATE OF NEW YORK
STATE TAX COMMISSION

Ross,
P.I. & UBT
1970

In the Matter of the Petition

of

MILTON AND MARGARET ROSS

For a Redetermination of a Deficiency or
a Refund of Personal & Unincorporated
Taxes under Article(s) 16, 16-A of the
Tax Law for the (Year(s) 1958 and 1959

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

State of New York
County of Albany

Linda 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 21st day of December, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Milton and Margaret Ross (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Jack Diamond
Karman and Bernstien
130 West 42nd 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

21st day of December, 1970

[Signature]

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MILTON AND MARGARET ROSS

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For a Redetermination of a Deficiency or
a Refund of Personal & Unincorporated
Taxes under Article(s) 16, 16-A of the
Tax Law for the (Year(s) 1958 and 1959;

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County of Albany

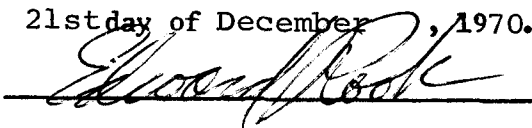
Linda Wilson, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 21st day of December, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Milton and Margaret Ross (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Milton and Margaret Ross
550 Fifth Avenue
New York 36, 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

21st day of December, 1970.





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Application	:	
of	:	
MILTON ROSS AND MARGARET ROSS	:	DETERMINATION
For Revision or Refund of Personal	:	
Income Taxes under Article 16 of	:	
the Tax Law and Unincorporated	:	
Business Taxes under Article 16-A	:	
of the Tax Law for the Years 1958	:	
and 1959	:	

Applicants, Milton Ross and Margaret Ross, have filed an application for revision or refund of personal income taxes under Article 16 and unincorporated business taxes under Article 16-A of the Tax Law for the years 1958 and 1959 (File Numbers AB012295 AB012294 and AB055055). A formal hearing was held before Vincent P. Molineaux, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on September 29, 1966, at 9:30 a.m. Karman & Bernstein, C.P.A.'s by Jack Diamond, appeared for applicants.

FINDINGS OF FACT

1. Applicants, Milton Ross and Margaret Ross, filed joint New York State Resident Income Tax Returns for the years 1958 and 1959. Applicant, Milton Ross, did not file any Unincorporated Business Tax Returns for the years 1958 and 1959.

2. On June 22, 1962, the Income Tax Bureau issued notices of additional assessment against applicants imposing unincorporated business taxes upon the income received by applicant, Milton Ross, from his sales activities during the year 1958 upon the grounds that those activities constituted the carrying on of an unincorporated business and assessed unincorporated business taxes, penalty and interest against them in the sum of \$456.14 and an additional

penalty for failure to file and pay unincorporated business taxes in the sum of \$600.00.

3. On April 6, 1964, the Income Tax Bureau issued a notice of additional assessment against applicants imposing additional personal income taxes and unincorporated business taxes upon the income received by applicant, Milton Ross, during the year 1959 in accordance with the federal audit of their 1959 Federal Income Tax Return and upon the ground that his sales activities during the year 1959, constituted the carrying on of an unincorporated business and assessed income and unincorporated business taxes, penalty and interest against them in the sum of \$763.22. The adjustment in accordance with the federal audit was not contested by them.

4. Applicant, Milton Ross, was an electrical parts salesman. He sold electrical parts for three unaffiliated firms. The items sold by him were non-competitive. These firms on occasion would give him leads. He spent one afternoon a week at one firm and one or two days a month at the other firms discussing his sales activities. In 1959 he had part-time clerical help.

5. During the years 1958 and 1959 the firms for whom applicant, Milton Ross, sold merchandise did not withhold federal and New York State income taxes and Social Security taxes. He was not reimbursed for expenses, except for Christmas gifts. They did not give him any insurance or pension benefits. On his 1959 tax returns he listed his income under business income. On schedule "C" of his Federal Return he deducted business expenses in connection with his sales activities. In 1958 he had his own telephone answering service and desk space. On occasion he bought and sold merchandise for his own account. Also, on occasion, he paid selling commissions to other salesmen. These firms did not exercise

any control over him as to the time spent or the manner and means by which he was to perform his sales activities, except to limit the geographic area in which he could sell.

CONCLUSIONS OF LAW

A. That the income received by applicant, Milton Ross, from the firms that he represented during the years 1958 and 1959 constituted receipts from his regular business of selling electrical parts and not compensation as an employee exempt from the imposition of unincorporated business taxes in accordance with the meaning and intent of Section 386 of the Tax Law.

B. That the aforesaid activities of applicant, Milton Ross, during the years 1958 and 1959 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business taxes in accordance with the meaning and intent of Section 386 of the Tax Law.

C. That the adjustment of applicants, Milton Ross's and Margaret Ross's, taxable income in the year 1959 to conform with the audit of their Federal Income Tax Return was properly made.

D. That applicants had reasonable cause for having failed to file a return for and pay unincorporated business taxes for the year 1958.

E. That the application of Milton Ross and Margaret Ross for revision is granted to the extent of cancelling the \$600.00 penalty imposed for failure to file a return for and pay unincorporated business taxes for the year 1958 (File Number AB-012294) and except as so granted is in all other respects denied.

DATED: Albany, New York

December 21, 1960

STATE TAX COMMISSION

Norman Gellman
COMMISSIONER

COMMISSIONER

Milton Kaerner
COMMISSIONER