

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER S. RAYNOR

:
:
:
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) 1968, 1969 and:
1970.

State of New York
County of Albany

JANET MACK

, 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 29th day of May, 1975, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Peter S. Raynor

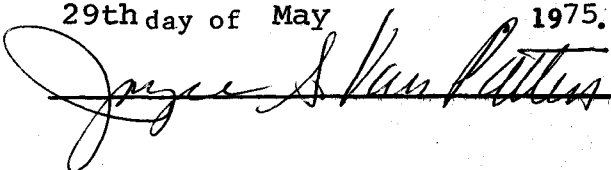
(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Peter S. Raynor
2 Fifth Avenue
New York, New York 10011

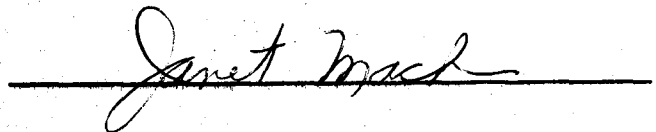
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

29th day of May 1975.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Peter S. Raynor

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) 1968, 1969 &
1970.

State of New York
County of Albany

JANET MACK, 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 29th day of May, 1975, she served the within
Notice of Decision (~~on the 29th day of May~~) by (certified) mail upon Ira J. Palestin, Esq.

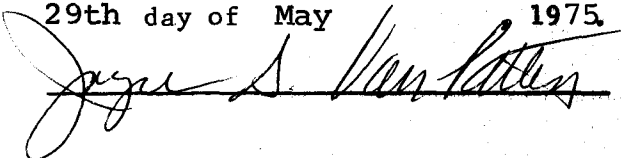
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Ira J. Palestin, Esq.
360 Lexington Avenue
New York, New York 10017

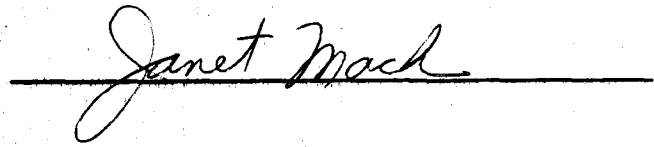
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

29th day of May 1975







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

James E. Tully, Jr.
PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
May 29, 1975

Mr. Peter S. Raynor
2 Fifth Avenue
New York, New York 10011

Dear Mr. Raynor:

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 deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

Paul E. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER S. RAYNOR	:	
for Redetermination of Deficiency or	:	DECISION
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1968, 1969 and 1970.	:	

Petitioner, Peter S. Raynor, residing at 2 Fifth Avenue, New York, New York 10011, 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 1968, 1969 and 1970. (File No. 0-66558148.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1975, at 1:25 P.M. and on March 5, 1974, at 10:30 A.M. Petitioner appeared by Ira J. Palestin, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUES

I. Did petitioner, Peter S. Raynor's selling activities during the years 1968, 1969 and 1970 constitute the carrying on of an unincorporated business?

II. Did petitioner, Peter S. Raynor, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1968, 1969 and 1970?

III. Did petitioner, Peter S. Raynor, properly deduct \$798.50 for use of his apartment for entertaining customers for the year 1970?

FINDINGS OF FACT

1. Petitioner, Peter S. Raynor, and his wife filed a New York State combined income tax return for the year 1968 and New York State income tax resident returns for the years 1969 and 1970.

2. On March 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Peter S. Raynor, imposing unincorporated business tax in the total sum of \$6,765.08 upon the income received by him from his activities as a salesman during the years 1968, 1969 and 1970. It also imposed penalties in the total sum of \$2,261.50 for failing to file unincorporated business tax returns for the years 1968, 1969 and 1970. It further imposed additional personal income tax for the year 1960 in the sum of \$398.44 based upon the disallowance of the following claimed deductions for lack of substantiation.

	<u>Claimed</u>	<u>Allowed</u>	<u>Disallowed</u>
Taxes (NY Stock Transfer Tax)	\$ 78.19	\$ -0-	\$ 78.19
Travel & Entertainment Expense	11,077.19	9,827.19	1,250.00
Use of Apartment for Entertainment	798.50	-0-	798.50
Gifts to Buyers	4,194.61	3,120.16	<u>1,074.45</u>
			\$3,192.14

In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$10,236.47. At the formal hearing he conceded the disallowance of all of the claimed deductions, except for deduction for the use of his apartment for the entertainment of customers.

3. Petitioner, Peter S. Raynor, was a girl's accessories salesman during the years 1968, 1969 and 1970. He sold girl's costume jewelry for Werthley, Inc. He sold girl's handbags and leather accessories for Pyramid Leather Goods, Inc. and its four subsidiaries. Werthley, Inc. was not affiliated with the Pyramid companies. Its products were not competitive with the products of the Pyramid companies. The products of all of the companies were basically sold to the same customers. He did not have any employees. He used a portion of his apartment as an office and for entertaining customers.

4. During the years 1968, 1969 and 1970, Werthley, Inc. withheld Federal and New York State income taxes and social security tax from a portion of the commission income paid to petitioner, Peter S. Raynor. It covered him for unemployment, health and group life insurance. He was not a member of its pension plan. Pyramid Leather Goods, Inc. and its subsidiary corporations did not withhold the aforesaid taxes from the commissions paid to him. They did not cover him for the aforesaid types of insurance. He was not reimbursed for his business expenses, including the costs of cooperative advertising, by any of his principals. He maintained a self-employed individual retirement plan. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities and techniques or over the time that he devoted to sales, except to limit the territory in which he could sell.

5. During the years 1968, 1969 and 1970, petitioner, Peter S. Raynor, retained an accountant who prepared his tax returns and

advised him as to tax matters.

6. Petitioner, Peter S. Raynor, resided in a three-room luxury apartment located at 2 Fifth Avenue in New York City during the year 1970. He did a substantial amount of entertaining of customers in the apartment. The reasonable rental value of said apartment for said use for said year was \$798.50.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Peter S. Raynor, from the firms that he represented during the years 1968, 1969 and 1970 constituted income from his regular business of selling girl's accessories and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Peter S. Raynor, during the years 1968, 1969 and 1970 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, Peter S. Raynor, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1968, 1969 and 1970, and, therefore, the penalties assessed pursuant to section 685(a) of the Tax Law are waived.

D. That petitioner, Peter S. Raynor, had a right to deduct business expenses for the cost of using a portion of his apartment in connection with his business activities during the year 1970 since it was appropriate, necessary and helpful in performing his duties and the expenses were approximately related to his work

and thus were ordinary and necessary business expenses. The amount claimed by him for the use of his apartment for entertainment of customers was reasonable.

E. That the petition of Peter S. Raynor is granted to the extent of cancelling the penalties imposed pursuant to section 685(a) of the Tax Law for the years 1968, 1969 and 1970 in the sum of \$2,261.50 and of reducing corrected New York taxable income for the year 1970 from \$24,019.28 to \$23,220.78 and of reducing additional personal income tax due for the year 1970 from \$398.44 to \$286.55 and of reducing unincorporated business tax due for the year 1970 from \$1,660.38 to \$1,616.47; that the Income Tax Bureau is hereby ordered to accordingly modify the Notice of Deficiency issued March 26, 1973; and, that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
May 29, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER