

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RALPH F. PASSONNO

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 and 23 of the :  
Tax Law for the Year ~~(xxxxxx)~~ :  
1968.

State of New York  
County of Albany

Jean Wager, 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 5th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Ralph F. Passonno ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Ralph F. Passonno  
115 Alpine Drive  
Syracuse, New York 13214

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

5th day of August, 1976.

Jean Wager

Janet Brock

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RALPH F. PASSONNO

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 and 23 of the :  
Tax Law for the Year(s) ~~1965, 1966, 1967~~ :  
1968.

State of New York  
County of Albany

Jean Wager, 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 5th day of August, 1976, she served the within Notice of Decision by (certified) mail upon John Passomo (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: John Passomo, 115 Alpine Drive, Syracuse, New York 13214

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

5th day of August, 1976.

Jean Wager

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

August 5, 1976

TELEPHONE: (518) 457-3850

Ralph F. Passorno  
115 Alpine Drive  
Syracuse, New York 13214

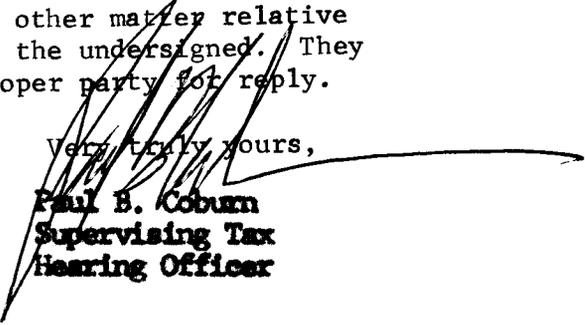
Dear Mr. Passorno:

Please take notice of the **Notice of 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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

  
Paul B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
RALPH F. PASSONNO : 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 Year 1968. :

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Petitioner, Ralph F. Passonno, 115 Alpine Drive, Syracuse, New York 13214, petitioned for a redetermination of deficiencies in personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1968.

A formal hearing was held at the offices of the State Tax Commission, Syracuse, New York, on July 23, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by John Passonno and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of counsel).

ISSUE

Was taxpayer a manufacturers' representative exempt as an employee or professional from unincorporated business tax under section 703 of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Ralph F. Passonno, timely filed New York State income and unincorporated business tax returns for the year 1968.

2. A notice of determination of deficiencies in personal income and unincorporated business taxes for the year 1968 was issued on May 21, 1973, against the taxpayer under File No. 9-34429108.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. The income tax changes were not in issue. The taxpayer's only contention was that he is not liable for the unincorporated business tax.

5. The taxpayer contended that he was exempt as an employee or a professional under section 703 of the Tax Law. He asserted that a professional manufacturers' representative is as much a profession as a doctor, dentist, lawyer, or architect.

6. The taxpayer's job of manufacturers' representative is to represent the manufacturer in a specific territory, his territory being all of upstate New York north of Westchester County, or New York State excluding greater New York City and Long Island. He acts as the liaison, the representative of the manufacturers in this area. It is the responsibility of the professional manufacturers' representative not only to sell and write orders for the particular company that he is representing but also to represent the company in a manner in which they would be proud and would be conducive to good business in the marketing area.

The manufacturers' representative must be knowledgeable on how to handle people, understand people, talk to them, relate to them. He then in turn must be able to relate his product knowledge to his customers and the end result hopefully being a sale. Once the sale is made he must teach this customer how to market the product, how to display it, how to advertise it, proper stock ratio versus profits, proper stock turnover, or movement of merchandise, the right place to store it, whether it is hot or cold, and once it gets on the sales counter the right place to put it so that it will sell.

If there is any defective merchandise the customers will generally go to the manufacturers' representative and ask him what to do with it. They get credit for defective merchandise. When shipments are lost in transit, the manufacturer's agent must be able to contact the manufacturer and trace shipments through trucking companies, make sure they arrive on time, in good shape to their destination. The manufacturers' representative supplies all of these services, overall services, to his customers, the end result being maintaining good customer relations and hopefully a better business.

The taxpayer at one time or another attended Rensselaer Polytechnic Institute, the University of Notre Dame and he had some education in chemistry. The taxpayer worked at the family paint business years ago

and has been in the paint field for forty years, the last eighteen as a manufacturers' representative. The taxpayer is a member of the professional manufacturers' representative association.

7. The taxpayer has no capital, no inventory or capital investment and no employees.

#### OPINION

In qualifying for the tax exemption accorded to one practicing a profession, such as medicine, law, dentistry, and architecture, consideration should be given to long term educational background generally associated with a degree in an advanced field of science or learning and the requirement of a license or diploma before entering the field to indicate sufficient qualifications prior to engaging in the profession, control of the occupation by standards of conduct, ethics and malpractice liability and the barrier to the carrying on of the occupation by a business corporation. Rosenbloom v. State Tax Commission 44 A.D. 2d 69. The taxpayer was not engaged in the practice of a profession and he was not an employee. An independent manufacturers' representative does not qualify for an employee's or professional exemption to the unincorporated business tax. Price v. State Tax Commission 40 A.D. 2d 930; Sundberg v. Bragliani 7 A.D. 2d 15.

#### CONCLUSIONS OF LAW

A. The taxpayer as an independent manufacturers' representative,

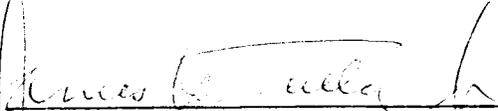
was engaged in an unincorporated business during the years in question and he was subject to the unincorporated business tax.

B. The taxpayer's petition is denied. The deficiencies in income and unincorporated business taxes are fully sustained.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

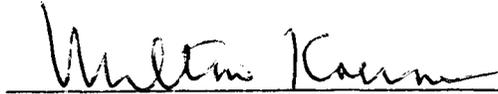
DATED: Albany, New York  
August 5, 1976

STATE TAX COMMISSION



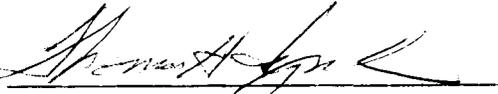
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PRESIDENT



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COMMISSIONER



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COMMISSIONER