

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH H. WALKER & FRANCINE WALKER

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)~~ 1969,
1970 and 1971.

State of New York
County of Albany

Donna Scranton, 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 23rd day of November, 1976, she served the within Notice of Decision by (certified) mail upon Kenneth H. & Francine Walker (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Kenneth H. Walker
65-24 162nd Street
Flushing, New York 11365 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

23rd day of November, 1976

Donna Scranton

Janet Back



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

November 23, 1976

TELEPHONE: (518) ~~457-3850~~

Mr. and Mrs. Kenneth H. Walker
65-24 162nd Street
Flushing, New York 11365

Dear Mr. and Mrs. Walker:

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.

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

In the Matter of the Petition :
of :
KENNETH H. WALKER AND FRANCINE WALKER :
for Redetermination of a Deficiency : DECISION
or for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Years 1969, 1970 and 1971. :

Petitioners, Kenneth H. Walker and Francine Walker, residing at 65-24 162nd Street, Flushing, New York 11365, have 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 1969, 1970 and 1971. (File No. 00535). A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 7, 1976 at 3:00 P.M. Petitioner, Kenneth H. Walker, appeared pro se and for his wife, Francine Walker. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUES

I. Whether the business activities of petitioner, Kenneth H. Walker, as a commission salesman for inter-related principals constituted the carrying on of an unincorporated business under section 703 of the Tax Law for the years 1969, 1970 and 1971.

II. Whether the income tax deficiencies assessed against Kenneth H. Walker and Francine Walker, his wife for 1970 and 1971 were proper.

FINDINGS OF FACT

1. Petitioners, Kenneth H. Walker and his wife, Francine Walker, timely filed joint New York State income tax returns for each of the years 1969, 1970 and 1971, but did not file unincorporated business tax returns for any of these years.

2. A Notice of Deficiency for personal income taxes was issued against the petitioners on April 12, 1974, for the years 1970 and 1971. On the same date a Statement of Audit Changes specified that adjustments in income in the amount of \$4,316.00 for 1970 and \$4,399.00 for 1971 were disallowed as unsubstantiated. New York State taxable income was increased by additional business income shown by petitioner, Kenneth H. Walker, on his Federal income tax return Form 1040 Schedule C, and by the amount of excess life insurance deducted. The Notice of Deficiency assessed petitioners, Kenneth H. Walker and his wife, Francine Walker, additional income taxes due for 1970 and 1971 of \$1,320.27 plus interest of \$200.10 for a total then due of \$1,520.37.

3. On April 12, 1974, a Notice of Deficiency and a Statement of Audit Changes were issued against petitioner, Kenneth H. Walker, detailing his liability for unincorporated business taxes for the years 1969, 1970 and 1971 then due in the amount of \$3,002.06 plus interest of \$488.73 for a total of \$4,490.79.

4. The Income Tax Bureau determined that the income derived from the activities of petitioner, Kenneth H. Walker, as a designer-salesman, was subject to the unincorporated business tax for the years 1969, 1970 and 1971. It was averred that there was no supervision over the petitioner's activities, and that he had the right to represent other companies.

5. Petitioners, Kenneth H. Walker and his wife, Francine Walker, timely filed a petition for redetermination of the income tax and the unincorporated business tax deficiencies assessed.

6. Petitioner, Kenneth H. Walker, was an outside salesman of lighting fixtures and illuminating ceiling systems. Neo-Ray Lighting Systems, Inc. produced and sold ceiling systems, including recessed fixtures with translucent coverings, the box, etc. Neo-Ray Products, Inc. produced and sold lighting fixtures only. Both companies were owned and controlled by the same individual, occupied the same premises, and shared employees. Separate order books were used for the separate companies, although the petitioner, Kenneth H. Walker, usually sold their products to the same customers. His commissions on these sales were separately stated on the Form 1099 by which these earnings were reported to the Federal Internal Revenue Service. The Forms 1099 show that each corporation had a separate employer's Internal Revenue Service registration number.

7. In 1969, petitioner, Kenneth H. Walker, also sold for G.S.V. Corp. of a Long Island City, New York address, and his earned commission from these sales was reported on a separate Form 1099 with

a third IRS number. Petitioner, Kenneth H. Walker, stated that G.S.V. Corp. was also a part of the Neo-Ray integrated lighting fixture producing and selling operation.

8. In response to a questionnaire sent by the Income Tax Bureau in January, 1973, petitioner, Kenneth H. Walker, wrote that (a) he is an independent salesman, (b) there is no supervisory or control over his activities, (c) that he has the right to represent other companies if he so wished, and (d) that there is no reimbursement of expenses by the company.

9. In subsequent correspondence and at the formal hearing, petitioner, Kenneth H. Walker, stated that he is under the direct supervision and control of Neo-Ray Lighting Systems, Inc. and that he was not permitted to sell for any other principal. The president of Neo-Ray wrote similarly.

10. No evidence was adduced with respect to the adjustment of personal New York State income taxes for 1970 and 1971.

CONCLUSIONS OF LAW

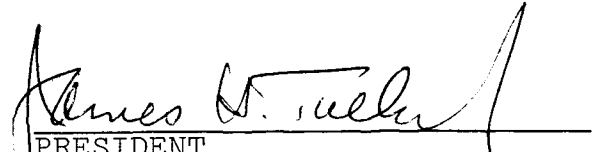
A. That in the absence of any substantiation of the adjustments to New York State taxable income claimed on 1970 and 1971 returns, the Notice of Deficiency dated April 12, 1974, relating to personal income tax, against petitioners, Kenneth H. Walker and Francine Walker, his wife, must be sustained.

B. That the question of whether or not the business activities of the petitioner, Kenneth H. Walker, as a commission salesman for two or more related principal corporations constituted the carrying on of an unincorporated business in 1969, 1970 and 1971 must be resolved against the petitioner. By his own contradictory statements, he has failed to carry the necessary burden of proof in order to show that he was an employee of Neo-Ray rather than an independent salesman. Petitioner, Kenneth H. Walker, was liable for unincorporated business taxes under section 703 of the Tax Law for the years 1969, 1970 and 1971.


C. That the petition of Kenneth H. Walker and Francine Walker, his wife, is in all respects denied.

DATED: Albany, New York
November 23, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M

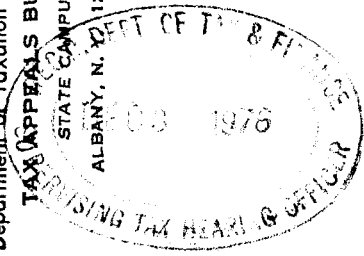
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



Mr. and Mrs. Kenneth H. Walker
 65-24 162nd Street
 Flushing, New York 11365

W.P.T.M.W.



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Tax Law for the Year(s) ~~or Period(s)~~
1969, 1970 and 1971.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 18th day of March, 1977, he served the within
Notice of Decision by (certified) mail upon Kenneth H. & Francine
Walker (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. Kenneth H. Walker
37 East Drive
Woodbury, NY 11797

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

18th day of March, 1977.

Bruce Batchelor

Janet Mack