

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK and CELIA DALVITO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of ~~Personal Income and~~ ^{Unincorporated Business} :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year ~~(1971)~~ 1971.:
~~(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 8th day of April , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Frank & Celia Dalvito

(~~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. Frank Dalvito
117 Grand Street
Mamaroneck, New York 10543

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

8th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK and CELIA DALVITO

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of ^{Personal Income and} Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year ~~(s) or Period(s)~~ 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 8th day of April , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Hans Ronis
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Hans Ronis
c/o Frank Giacomo, P.A.
132 W. Boston Post Road
Mamaroneck, New York 10543
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

8th day of April , 1977.

Bruce Batchelor

Janet MacL



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

April 8, 1977

TELEPHONE: (518) **457-1723**

Mr. & Mrs. Frank Dalvito
117 Grand Street
Manaroneck, New York 10543

Dear Mr. & Mrs. Dalvito:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **690 and 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,
Frank J. Puccia
Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	DECISION
FRANK AND CELIA DALVITO	:	
	:	
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 Year 1971.	:	
	:	

Petitioners, Frank and Celia Dalvito, residing at 117 Grand Street, Mamaroneck, New York 10543, have 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 year 1971. (File No. 1-79038896). A small claims hearing was held before Harry Huebsch, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 25, 1976 at 1:15 P.M. Petitioners appeared by Hans Ronis. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq., of counsel).

ISSUE

Did petitioner, Frank Dalvito's selling and public relations' activities during the period from January through May, inclusively, in the year 1971, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT .

1. Petitioners, Frank and Celia Dalvito, filed a New York State personal income tax return for 1971. Upon audit, the Income Tax Bureau issued a Statement of Audit Changes which contended that petitioner, Frank Dalvito, was a self-employed public relations man for five months in 1971 whose income from such activity was subject to unincorporated business tax. The Income Tax Bureau also made adjustments to petitioners, Frank and Celia Dalvito's personal income tax which are not contested or an issue. In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$573.24 additional tax due, plus penalty of \$122.06 and interest of \$155.79, for a sum of \$851.09.

2. During the period, January through May of the year 1971, petitioner, Frank Dalvito, sold electric transformers on a 2% commission basis throughout the United States for Universal Manufacturing Corporation. He was not issued a withholding slip for this period and no deductions were made from his compensation. Petitioner, Frank Dalvito, earned \$20,830.90 in commissions during this period and reported \$9,602.00 as unreimbursed expenses incurred in and attributable to this period. By his own admission, petitioner, Frank Dalvito, was unsupervised by his principal and was self-employed.

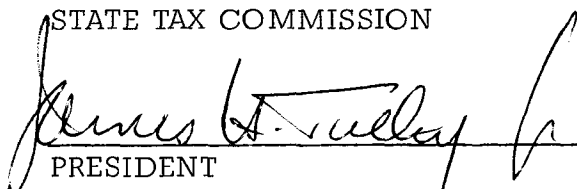
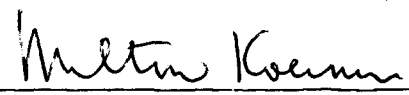

CONCLUSIONS OF LAW

A. That the income received by petitioner, Frank Dalvito, during January through May in the year 1971 from Universal Manufacturing Corporation constituted income from his regular business of selling electric transformers and providing public relations services and not compensation as an employee exempt from the imposition of 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, Frank Dalvito, during the period January through May in the year 1971, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) of the Tax Law.

C. That the petition of Frank and Celia Dalvito is denied and the Notice of Deficiency issued November 24, 1975 is sustained.

DATED: Albany, New York
April 8, 1977

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER