

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

FRANK O'CONNOR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 and 23 of the :
Tax Law for the Year(s) ~~XXXXXXX~~ :
1969, 1970, and 1971.

State of New York
County of Albany

John Huhn , 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 6th day of October , 1978, she served the within
Notice of Decision by (certified) mail upon Frank O'Connor

(~~XXXXXXXXXXXXXXXXXXXX~~
~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Frank O'Connor
112 Deer Field Court
Oradell, New Jersey 07649

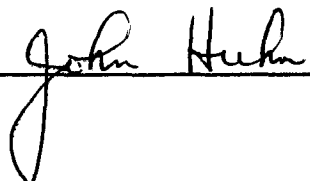
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~XXXXXXXXXXXXXXXXXXXX~~
~~representative of~~)
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXXXXXXXXXXXXXXX~~ petitioner.

Sworn to before me this

6th day of October , 1978.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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FRANK O'CONNOR

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1969, 1970, and 1971.

AFFIDAVIT OF MAILING

State of New York
County of Albany

John Huhn , 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 6th day of October , 1978 , she served the within

Notice of Decision by (certified) mail upon Goidel, Goidel &

Helpfenstein, Esqs. (representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Goidel, Goidel & Helpfenstein, Esqs.

127 John Street
New York, New York 10038

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

6th day of October , 1978.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

October 6, 1978

Frank O'Connor
112 Deer Field Court
Oradell, New Jersey 07649

Dear Mr. O'Connor:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **690 & 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

Michael Alexander
Supervising Tax Hearing Officer

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
FRANK O'CONNOR	:	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 Years 1969, 1970 and 1971.	:	

Petitioner, Frank O'Connor, 112 Deer Field Court, Oradell, New Jersey 07649, 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. 01354).

A formal hearing was held before Michael Alexander, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 19, 1977 at 9:15 A.M. and continued before Neil Fabricant, Hearing Officer, at the same location on June 22, 1977 at 9:15 A.M. Petitioner appeared by Goidel, Goidel and Helfenstein, PC (Alvin I. Goidel, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (James A. Scott, Esq. and Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the activities of petitioner, a nonresident, for Williams Furniture Division of Georgia-Pacific, Inc., constituted the carrying on of an unincorporated business in New York State within the meaning and intent of section 703 of the Tax Law for the years 1969, 1970 and 1971.

II. Whether petitioner, a nonresident, was subject to New York State income tax on income received by him for services rendered to the Williams Furniture Division of Georgia-Pacific, Inc. for the years 1969, 1970 and 1971.

FINDINGS OF FACT

1. Petitioner, Frank O'Connor, a New Jersey resident during the years 1969, 1970 and 1971, did not file New York State personal income or unincorporated business tax returns for said years.

2. As a result of a field audit, the Income Tax Bureau issued two statements of audit changes to petitioner on August 27, 1973. One statement asserted unincorporated business tax of \$1,104.19, \$1,457.98 and \$1,937.53 (for a total of \$4,499.70) for the years 1969, 1970 and 1971, respectively. This was in addition to a penalty of \$1,614.89 (pursuant to sections 685(a)(1) and (2) of the Tax Law) and interest of \$588.82. The second statement issued against petitioner, Frank O'Connor, and Margaret O'Connor,

his wife, stated personal income tax due of \$1,215.17, \$1,757.47 and \$2,876.19 (for a total of \$5,848.83) for the years 1969, 1970 and 1971, respectively. This was in addition to a penalty of \$2,064.40 (pursuant to sections 685(a)(1) and (2) of the Tax Law) and interest of \$730.70.

3. On August 27, 1973 and in accordance with the aforesaid statements of audit changes, the Income Tax Bureau issued a Notice of Deficiency against Frank O'Connor for \$6,703.41; it issued another Notice of Deficiency against Frank O'Connor and Margaret O'Connor for \$8,643.93.

4. During the years at issue, petitioner sold furniture for Williams Furniture Division of Georgia-Pacific, Inc. (hereinafter "Williams"). Petitioner was paid on a commission basis and received no reimbursement for the expenses that he incurred. In addition to his selling activities, petitioner contended that he served as an employee of Williams as Director of Product Development, for which he received an annual salary of \$18,000.00. No evidence of his duties in this regard was adduced nor was evidence proffered regarding the relationship of the director position and the sales position.

5. For the years in issue, petitioner represented only one principal, had his territory limited to the New York City metropolitan area (including parts of New Jersey and Connecticut), was subject to sales quotas and was required to obtain his principal's approval for any vacations which he took.

6. Williams maintained a showroom in New York City, where petitioner worked approximately one day per week. Petitioner paid for telephone usage at said showroom. In addition to the aforementioned facility, petitioner maintained an office in his home which was equipped with a phone, desk and files. He also listed his parents home in New Jersey as an office. Petitioner contended that he also maintained an office in Fort Lee, New Jersey; however, no rental expense was claimed therefor on his Federal returns and no evidence was submitted to show that such expense was incurred. No evidence indicating the address of such office, a telephone listing or lease therefor was proffered.

7. Petitioner considered himself to be self-employed during the period in issue and so described himself on his 1969 Federal income tax return. Several salespersons worked for petitioner and commissions on sales made by them were paid to petitioner, who would keep a portion of the commission and remit the balance to the salespersons.

8. Petitioner's Federal Schedule C's contained an expense for the commissions paid salespersons of \$51,767.31 in 1969, \$45,960.28 in 1970 and \$50,712.80 in 1971. However, no records

were submitted to show what portion of his activities or his salespersons' activities were performed outside New York State.

9. Approximately 70 of petitioner's estimated total of 200 customers were located in New York State.

CONCLUSIONS OF LAW

A. That petitioner, Frank O'Connor's activities constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law. Petitioner has failed to establish that his activities as an employee of Williams were not interconnected and interrelated with his selling activities, so as not to constitute a part of his unincorporated business pursuant to section 703(b) of the Tax Law.

B. That petitioner, Frank O'Connor, has failed to sustain the burden of proof required to show that his business was regularly carried on within and without New York State, within the meaning and intent of section 707(a) of the Tax Law; therefore, all income from said unincorporated business, including the salary referred to in Conclusion of Law "A", is subject to unincorporated business tax.

C. That section 707(a) of the Tax Law provides that an unincorporated business which is carried on within and without New York is entitled to an allocation of a fair and equitable portion

of the excess of its unincorporated business gross income over its unincorporated business deductions; however, if the business has no regular place of business outside New York, all of such excess is to be allocated to New York.

D. That petitioner had a regular place of business at Williams' offices in New York City.

E. That for petitioner to be entitled to allocation of income attributable to sources outside New York for purposes of determining unincorporated business tax, there must be evidence that the unincorporated business has a regular place of business in another state and that the place of business outside the state is systematically and regularly used by the entity in carrying on its business. McMahan v. State Tax Commission 45 A.D. 2d 624.

F. That petitioner, Frank O'Connor, failed to sustain the burden of proof required to show that he had the requisite regular place of business outside New York for allocation, pursuant to section 707(a) of the Tax Law; consequently, all income from said unincorporated business, including the salary received (Conclusion of Law "A", above), is subject to unincorporated business tax.

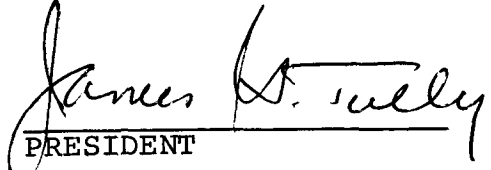
G. That the income which petitioner received from Williams Furniture for the years at issue is considered to be New York

source income within the meaning and intent of section 632(b) of the Tax Law and, thus, subject to personal income tax.

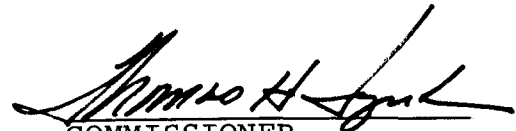
H. That the petition of Frank O'Connor is denied and the notices of deficiency issued August 27, 1973 are sustained.

DATED: Albany, New York
October 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER