

U. B. T. Determination A-Z
Ross, Robert W.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ROBERT W. ROSS	:	Affidavit of Mailing
	:	of Notice of Decision,
	:	by Registered Mail
For a Redetermination of a Deficiency	:	
or a Refund of 16-A	:	
Taxes under Article(s)	:	of the Tax
Law for the year(s) 1956, 1957, 1958 &	:	
1959	:	

State of New York
County of Albany

LYNN HORODOWICH, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 7th day of July, 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Mr. Robert W. Ross

the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Robert W. Ross, 1015 Broad Street, Syracuse, New York and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
7th day of July, 1969.

Grace E. Pritchard

Lynn Horodowich

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of :

ROBERT W. ROSS :

Affidavit of Mailing
of Notice of Decision,
by Registered Mail

For a Redetermination of a Deficiency :
or a Refund of Unincorporated Business :
Taxes under Article(s) 16-A of the Tax :
Law for the year(s) 1956, 1957, 1958 and :
1959

State of New York
County of Albany

LYNN HORODOWICH , being duly sworn, deposes and
says, that she is an employee of the Department of Taxation and
Finance, and that on the 7th day of July , 1969, she served
the within Notice of Decision (or of "Determination") by registered
mail upon William J. Mackay, Esq. representative for the
the petitioner in the within proceeding, by enclosing a true copy
thereof in a securely sealed postpaid wrapper addressed as follows:

William J. Mackay, Esq. of Counsel, 301 Wilson Bldg. Syracuse 2 N.Y.
and by delivering the same at Room 214a, Building 8, Campus, Albany,
marked "REGISTERED MAIL" to a messenger of the Mail Room, Building
9, Campus, Albany, to be mailed by registered mail.

That deponent further says that the said addressee is the
petitioner herein and that the address set forth on said wrapper
is the last known address of the petitioner.

Sworn to before me this

7th day of July , 1969

Grace E. Pritchard

Lynn Horodowich

U. B. T. *U. B. T. Britton v. State Tax Commission*
A-2
Ross, Robert W.
DEPARTMENT OF TAXATION AND FINANCE

MEMORANDUM

TO: Mr. Edward Rook
FROM: Mr. Lawrence A. Newman
SUBJECT: Robert W. Ross
Article 16A, 1956-1959 inclusive
Proposed Decision Attached

DATE June 12, 1969
OFFICE Hearing Unit

The proposed decision was drafted by Mr. Lawrence Gifford in 1961 but its submission was delayed until a closely similar case could be considered in the Appellate Courts.

The case, Matter of Britton v. State Tax Commission was decided by the Court of Appeals on January 19, 1967, (19 NY 2nd, 613) affirming the determination of the Commission in holding a manufacturers' representative, who conducted his business in the same manner, subject to the Unincorporated Business Tax.

Therefore, I recommend approval of this proposed decision.

Lawrence A. Newman

LAWRENCE A. NEWMAN
Hearing Officer

LAN:pw

all

STATE OF NEW YORK
STATE TAX COMMISSION

-----X
IN THE MATTER OF THE APPLICATIONS :
OF :
ROBERT W. ROSS :
FOR REVISION OR REFUND OF UNINCORPORATED :
BUSINESS TAXES UNDER ARTICLE 16-A OF THE :
TAX LAW FOR THE YEARS 1956, 1957, 1958 :
AND 1959 :
-----X

Robert W. Ross, having duly filed applications for revision or refund of unincorporated business taxes paid under Article 16-A of the Tax Law for the years 1956, 1957, 1958 and 1959, and a hearing having been held in connection therewith at the office of the State Tax Commission, The Governor Alfred E. Smith State Office Building, Albany 1, N. Y., on May 3, 1961, before Laurence S. Gifford, Hearing Officer, of the Department of Taxation and Finance, at which hearing the taxpayer appeared personally and testified, being represented by William J. MacKay, Of Counsel, 301 Wilson Building, Syracuse 2, New York, and Allen C. Ritz, Certified Public Accountant, 119 Columbia Avenue, Syracuse 7, New York, and the record having been duly examined and considered, the State Tax Commission hereby finds:

(1) That the taxpayer filed returns of income under Article 16-A of the Tax Law for each of the calendar years 1956, 1957, 1958 and 1959; that he reported thereon the total amounts of his commission income as a manufacturer's representative for Production Products Company, Inc., Mercury Aircraft, Inc., Barthelmes Manufacturing Company, Inc., Alliance Tool and Die Corp., and Alliance Mold Company, Inc.

(2) That thereafter and within the time prescribed by Section 374 of the Tax Law, the taxpayer filed applications for refund of unincorporated business taxes paid for each of such years on his income as a sales representative; that such claims were based on the grounds that the taxpayer was not carrying on an unincorporated business as he did not maintain an office or have employees.

(3) That during the above years, the taxpayer did not maintain an office or hire employees in connection with the carrying on of his activities as a sales representative for the above cited principals; that each of his principals knew that he represented the other principals; that none of the principals had any type of arrangement among themselves and/or the taxpayer requiring the taxpayer to devote a specified portion of his working time to the affairs of any one principal; that the taxpayer attempted to promote the products of more than one of his representatives when calling on a particular customer where warranted; that the taxpayer was not required to render reports to any of his principals; that none of the principals treated the taxpayer as an employee for Federal tax purposes, for insurance purposes, or for any other purpose.

(4) That the taxpayer estimated that approximately 10% of his total commission income was from out-of-state sources; that if 10% of the total commission income of the taxpayer and applicable expenses were excluded from taxable income as out-of-state net income, after reflecting necessary adjustments for service credits properly allowable under Section 386-e of the Tax Law, the unincorporated business taxes on the remainder of the income, as representing New York State income, would then exceed the taxes originally computed and paid for each respective year here involved, as follows:

<u>Year</u>	<u>Total net taxes computed and paid</u>	<u>Total taxes due on basis of New York income only</u>	<u>Indicated tax refund</u>
1956	\$247.00	\$203.81	\$43.19
1957	697.45	584.21	113.24
1958	222.14	181.43	40.71
1959	307.34	254.29	53.05

(5) That in view of all the circumstances, it is hereby found that the taxpayer carried on his sales activities during each of the above years as an independent contractor rather than as an employee.

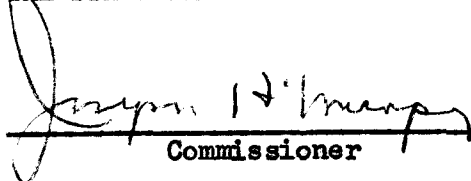
Upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

DETERMINES:

That the taxpayer's activities as a sales representative during each of the above years for his several principals constituted the carrying on of an unincorporated business, within the meaning and intent of Section 386 of the Tax Law, as the taxpayer was not an employee of such principals; that, accordingly, the taxpayer's income from his activities as a sales representative, to the extent derived from New York State sources, is subject to the unincorporated business tax under Article 16-A of the Tax Law; that the unincorporated business taxes paid by the taxpayer for the years here involved under such article on his income from New York State sources are correct and represent taxes legally due and owing; that the taxpayer is entitled to refund of unincorporated business taxes paid on the portion of his income as a sales representative from sources without the State of New York in the respective amounts for the above years, as set forth in paragraph numbered (4) above, and it is so ORDERED.

Dated: Albany, N. Y., June 30 1969.

THE STATE TAX COMMISSION


Commissioner


Commissioner


Commissioner