

STATE OF NEW YORK
STATE TAX COMMISSION

Lyon, Joel C.
U.B. 7
1976

In the Matter of the Petition

of

JOEL C. LYON

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1961 & 1962 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Janet Wright , 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 20th day of November , 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Joel C. Lyon
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Joel C. Lyon
140 Riverside Drive
New York, New York 10024

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

20th day of November , 1970.

[Signature]

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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For a Redetermination of a Deficiency or
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Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1961 & 1962 ;

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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 20th day of November , 1970 , she served the within
Notice of Decision (or Determination) by (certified) mail upon David D. Apt,
C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: David D. Apt, C.P.A.
377 Fifth Avenue
New York, New York 10016

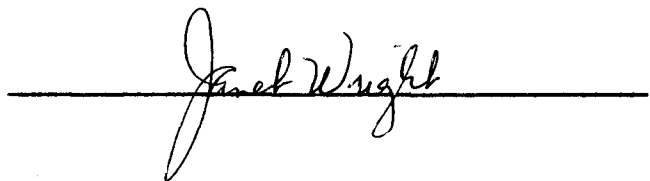
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of) petitioner herein and that the address set forth on said wrapper is the last
known address of the (representative of the) petitioner.

Sworn to before me this

20th day of November 1970.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOEL C. LYON	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the years 1961 and 1962	:	

Petitioner, Joel C. Lyon, has filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under article 23 of the Tax Law for the years 1961 and 1962. (file number 2-3810650). A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 17, 1970 at 3:00 P.M. Petitioner, Joel C. Lyon, appeared by David D. Apt, CPA. The Income Tax Bureau appeared by Edward H. Best, Esq. (Solomon Sies, Esq., of counsel).

FINDINGS OF FACT

1. Petitioner, Joel C. Lyon and his wife filed joint New York State income tax resident returns for the years 1961 and 1962. He did not file any unincorporated business tax returns for the years 1961 and 1962.

2. On October 25, 1965 the Income Tax Bureau issued a statement of audit changes against petitioner, Joel C. Lyon, imposing unincorporated business tax upon the income received by him from his activities as a commission salesman during 1961 and 1962 upon the ground that his sales activities constituted the carrying on of an unincorporated business in accordances with the provisions of Article 23 of the Tax Law and accordingly issued a notice of deficiency therefor in the sum of \$495.93.

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3. Petitioner, Joel C. Lyon, was a paper goods salesman. During the years 1961 and 1962 he represented eleven unaffiliated firms in the sale of paper goods. The items sold by him for each firm were non-competitive. He did not maintain an office or a business telephone. He did not employ any assistants.

4. During the years 1961 and 1962 three of the eleven firms, for whom petitioner, Joel C. Lyon, sold merchandise withheld New York State and federal withholding taxes and social security taxes from the commissions paid to him. In 1961 taxes were withheld on slightly more than one half and in 1962 on slightly less than one half of his gross commission income. He did not receive a draw against commissions. He did not receive paid vacations. He was not required to submit periodic reports of his activities to the firms he represented. These firms did not exercise any control over him as to the time spent or the manner or means by which he was to perform his activities, except to limit the geographical area in which he could sell.

CONCLUSIONS OF LAW

A. That petitioner, Joel C. Lyon's representation of more than one firm during the years 1961 and 1962, did not in and of itself constitute the carrying on of an unincorporated business in accordance with the intent and meaning of Section 703(f) of the Tax Law.

B. That the income received by petitioner, Joel C. Lyon, from the eleven firms he represented during the years 1961 and 1962 constituted receipts from his regular business of selling paper goods and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the intent and meaning of Section 703(b) of the Tax Law.

C. That the aforesaid activities of petitioner, Joel C. Lyon, during the years 1961 and 1962 constituted the carrying on of an unin-

corporated business and that his income derived therefrom was subject to unincorporated business tax in accordance with the intent and meaning of Section 703 of the Tax Law.

D. That the petition of Joel C. Lyon for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962 is denied and the notice of deficiency issued October 25, 1965, against petitioner, Joel C. Lyon, is sustained.

DATED: Albany, New York
November 18, 1970

STATE TAX COMMISSION

Uppman Gellman
COMMISSIONER

Bruce Mendez
COMMISSIONER

Milton Koerner
COMMISSIONER