

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BEN MILLER

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business:  
Taxes under Article(x) 23 of the  
Tax Law for the (Year(s) 1963 & 1964 :

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

*deposited  
c CH # 99-228*

State of New York  
County of Albany

Margaret Wood, 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 4th day of June, 1970, she served the within  
Notice of Decision (~~tax determination~~) by (certified) mail upon Edward S.

Pinkiert (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Edward S. Pinkiert, CPA  
340 W. Fulton Street  
Long Beach, New York 11561

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

4th day of June, 1970.

*Janet Wright*

*Margaret Wood*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BEN MILLER

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business  
Taxes under Article(~~x~~) 23 of the  
Tax Law for the (Year(s) 1963 & 1964 :

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

State of New York  
County of Albany

Margaret Wood, 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 4th day of June, 1970, she served the within Notice of Decision (~~on Determination~~) by (certified) mail upon Mr. Ben Miller (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Ben Miller  
256-01 41st Drive  
Little Neck, New York 11363  
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

4th day of June, 1970.

Janet Wright

Margaret Wood

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BEN MILLER	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Busi-	:	
ness Taxes under Article 23 of the	:	
<u>Tax Law for the years 1963 and 1964</u>	:	

Mr. Ben Miller has petitioned for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1963 and 1964. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on October 29, 1969. The petitioner appeared through Edward S. Pinkiert, CPA; and the Income Tax Bureau was represented by Edward H. Best, Esq., (Albert J. Rossi, Esq. of counsel).

FINDINGS OF FACT:

1. The petitioner did not file unincorporated business tax returns for the years 1963 and 1964.

2. On October 17, 1966, the Income Tax Bureau issued a notice of deficiency under file numbered 28011828 for the years 1963 and 1964, including a deficiency of unincorporated business tax and penalty under §685(a) of the Tax Law, totalling \$2449.26, plus statutory interest.

The deficiency was based on a finding by the Income Tax Bureau that the petitioner's business income was subject to the unincorporated business tax.

3. The petitioner is a sales representative for the IMC Magnetics Corp. and the United Transformer Corporation. The petitioner is paid on a straight commission basis for business solicited by him. The principals do not withhold income or social

NOV 19 1960

NOT RECORDED BY THE FBI

In the last of the following

20

2007-09-09

ALICE MARR

The Year for the year ending 1971

Edward H. West, Inc. (Allegedly, an "officer")  
 Division, FBI; and the license was renewed on 27  
 on October 27, 1961. The petition was signed Edward H.  
 the officers of the Texas Tax Commission in the City of San Antonio  
 holding was held before Governor A. Henry, West, Inc. in  
 Article 27 of the Tax Law for the years 1959 and 1960. A former  
 testimony on the return of which appeared outside from which  
 Mr. West Miller has petitioned for a re-evaluation of a

SECRET

1. The restriction did not file an answer to the complaint for return for the years 1968 and 1969.

2. On October 17, 1968, the Board of Tax Payers issued a notice of delinquency order to the taxpayer for the years 1968 and 1969, including a delinquency of approximately \$10,000.00 and penalty under 6821(a) of the Tax Law, totaling \$1,000.00 and interest thereon.

The following was noted on a listing of the Income Tax returns for the calendar year 1964:

3. The petition is a joint representation for the Irish Republic and the United Kingdom Association. The petition is held on a subject of common interest for both parties. The principle is not extended to any other party.

security taxes from the amounts earned by the petitioner. During the years in question, the petitioner included Schedule C, Profit from Business or Profession with his United States income tax returns. The petitioner's gross receipts were listed, and numerous items of expense were deducted, including depreciation, rent, auto expense, lunches, telephone, gifts and gratuities, entertainment, etc.

4. The principals do not exercise a degree of direction and control over the activities of the petitioner consistent with an employer-employee relationship. The petitioner is not an employee of his principals.

DECISION:

A. The business activities of the petitioner constitute the carrying on of an unincorporated business within the meaning and intent of Article 23 of the Tax Law, and the resulting income is subject to the unincorporated business tax.

B. The notice of deficiency is sustained, and the petition is denied.

DATED: Albany, New York  
June 3, 1970

STATE TAX COMMISSION

*Norman Gallman*  
COMMISSIONER

*Bruce Mauley*  
COMMISSIONER

*William Koerner*  
COMMISSIONER

security from the amount of the...  
the years in question, the petitioner...  
from business or... his United States...  
The petitioner's... were... and...  
items of expense were... including...  
expense, including... and...  
etc.

1. The petitioner... exercise a... of discretion...  
control over the activities of the...  
employee-employer relationship. The petitioner is not an...  
of his principals.

EXHIBIT:

A. The business activities of the...  
... on of an... within the... and  
... of article 24 of the... and the...  
... to the...  
B. The notice of... is... and the...  
is...

2 MAY 1971

RECEIVED: May 2, 1971

CONFIDENTIAL

CONFIDENTIAL

CONFIDENTIAL

MEMORANDUM

TO: Edward Rook

FROM: Lawrence A. Newman

SUBJECT: Re: Petition of Ben Miller  
Decision of State Tax Commission dated June 3, 1970  
Article 23, Years 1963 and 1964  
Section 685A, delinquency penalty, \$489.85

The decision of the Commission found the petitioner subject to the Unincorporated Business Tax, and sustained the deficiency as issued by the Income Tax Bureau.

The original deficiency included a 25% delinquency penalty under Section 685A of the Tax Law. However, the petitioner's representative did not refer to it during the formal hearing.

The petitioner has paid the basic tax. The Income Tax Bureau has referred the representative's request for remission of the penalties to the Commission for its guidance.

Section 685A provides for the elimination of this penalty if "such failure (to file) is due to reasonable cause and not due to willful neglect."

This deficiency represents the first instance in which the Unincorporated Business Tax has been assessed against the petitioner.

I recommend that the State Tax Commission advise the Income Tax Bureau that it may cancel this penalty.

*alt/gk*

Approved:

*Lawrence A. Newman*

*Bruce Hawley*

*Milton Koenig*

*Lawrence A. Newman*  
Lawrence A. Newman  
Hearing Officer