

STATE OF NEW YORK  
STATE TAX COMMISSION

*Ross; Kern*  
*u B F*  
*1970*

In the Matter of the Petition

of

Herbert and Edith Ross

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business Taxes  
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

*deposited*  
*99-345*

State of New York  
County of Albany

Martha Funaro , 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 29th day of December , 19 70, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Herbert &  
Edith Ross (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Herbert and Edith Ross  
126 Parkledge Drive  
Buffalo, New York 14226

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

29th day of December , 1970

*James S. Van Patten*

*Martha Funaro*

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
HERBERT ROSS AND EDITH ROSS	:	DECISION
for Redetermination of Deficiency	:	
or for Refund of Unincorporated	:	
Business Taxes under Article 23 of	:	
the Tax Law for the Years 1961 and	:	
1962	:	

---

Petitioners, Herbert Ross and Edith Ross, have filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law. (File # 2-3727888). A formal hearing was held before Vincent P. Molineaux, Hearing Officer, at the offices of the State Tax Commission, 65 Court Street, Buffalo, New York, on August 2, 1966 at 1:30 P.M. Petitioner, Herbert Ross, appeared in person.

FINDINGS OF FACT

1. Petitioners 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 those years.
2. On June 7, 1965 the Income Tax Bureau issued a statement of audit changes against petitioners imposing unincorporated business tax upon the business income received by him from his activities as a salesman during the years 1961 and 1962 upon the ground that these activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law and accordingly issued a notice of deficiency therefor in the sum of \$803.51.
3. Petitioners conceded in their petition that the business activities of petitioner, Herbert Ross, constituted the carrying on of an unincorporated business, but contended that he was entitled to allocation of income based upon the fact that 60% of his business

income was derived from outside New York State.

4. Petitioner, Herbert Ross, was a stationery and office equipment salesman during the years 1961 and 1962. He sold merchandise in New York, Michigan, Ohio and Pennsylvania. Approximately 60% of his sales were made outside of New York State. He maintained his office and business headquarters in his home in Buffalo, New York. He had no regular place of business outside of New York.

CONCLUSIONS OF LAW

A. That since petitioner, Herbert Ross, did not have a regular place of business outside of the State of New York, during the years 1961 and 1962, all of his business income, including that income derived from out of state sales, was properly allocated to New York State in accordance with the meaning and intent of Section 707(a) of the Tax Law.

B. That the aforesaid sales activities of petitioner, Herbert Ross, during the years 1961 and 1962 constituted the carrying on of an unincorporated business and his business income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of Section 703 of the Tax Law.

C. That the petition of Herbert Ross and Edith Ross is denied and the notice of deficiency issued June 7, 1965 is sustained.

DATED: Albany, New York  
*December 28, 1970.*

STATE TAX COMMISSION

*Norman L. Latham*  
\_\_\_\_\_  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER

*William Koene*  
\_\_\_\_\_  
COMMISSIONER