

STATE OF NEW YORK
STATE TAX COMMISSION

Scheibe, Erich
4 BT
1970

In the Matter of the Petition

of

Erich & Kaete Scheibe

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

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 Erich &
Kaete Scheibe (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Joseph Solomon
386 Park Avenue South
New York, New York

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.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Erich & Kaete Scheibe

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

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 , 1970 , she served the within Notice of Decision (or Determination) by (certified) mail upon Erich & Kaete Scheibe (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Erich & Kaete Scheibe
690 Port Washington Avenue
New York, New York 10040

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.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition of

ERICH AND KAETE SCHEIBE

for a Redetermination of a Deficiency
of Unincorporated Business Taxes under
Article 23 of the Tax Law for the years
1961 and 1962

DECISION

Erich and Kaete Scheibe petitioned for a redetermination of a deficiency of Unincorporated Business Taxes under Article 23 of the Tax Law for the years 1961 and 1962. A formal hearing was held in the offices of the State Tax Commission, 80 Centre Street, New York, N. Y.

Joseph Solomon, C.P.A., represented the taxpayers and the Income Tax Bureau was represented by Edward H. Best, Esq., Albert J. Rossi, Esq., of Counsel.

FINDINGS OF FACT

1. The petitioners Erich and Kaete Scheibe, did not file Unincorporated Business Tax returns for the years 1961 and 1962.
2. On July 11, 1966, a notice of deficiency was issued by the Income Tax Bureau under file number 2-3844042 for the years 1961 and 1962. The deficiency was based on a determination that Erich Scheibe's activities as a sales representative constituted the carrying on of an unincorporated business and the income derived from this source was subject to the Unincorporated Business Tax.
3. The petition, timely filed, states that the taxpayer, an individual, is a sales representative for several firms and does not maintain an office, does not employ any assistants and does not otherwise regularly carry on a business and relies on the Tax Law provision that a salesman shall not be deemed engaged in an unincorporated business solely by reason of selling merchandise for more than one enterprise. (§703 (f) Tax Law).

4. Petitioner, Erich Scheibe was a salesman on a commission basis, representing four firms in 1961 and three firms in 1962, from his home.

5. Petitioner's commissions were not subject to withholding tax and there was no deduction for unemployment insurance. There was no Social Security deduction. Petitioner deducted his expenses from his receipts.

6. Petitioner did not maintain an office or showrooms and he had no employees. Petitioner's hours were not definitely established. Whether petitioner's vacations or time off required the consent of the company was not shown, but only that he was on a commission basis. Petitioner failed to show whether his contract with the companies was verbal or written and what controls, if any, were imposed by the various firms.

DECISION

A. With respect to an unincorporated business, the issue of employer-employee relationship is a question of control in the absence of which there can be no finding of employment. A salesman is not an employee where he is not subject to direction and control as to his activities and the manner in which he is to make sales by the concerns whose products he sells.

B. Petitioner's case fails to show that he is under the direction and control of the firms whose products he sells. Petitioner's case fails to show any error in the Income Tax Bureau's determination that petitioner is operating an unincorporated business under the Tax Law and that his income is subject to Unincorporated Business Tax.

C. Petitioner's business income as a salesman is subject to Unincorporated Business Tax.

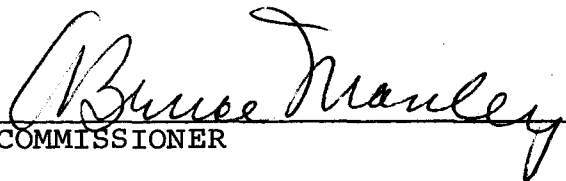
D. The deficiencies for 1961 and 1962 determined under file number 2-3844042 are correct and are sustained.


E. Pursuant to Section 684 of the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York
December 28, 1970.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER