

STATE OF NEW YORK  
STATE TAX COMMISSION

HEARING UNIT - File Copy

TAX UBT

ART. 23 SECS. \_\_\_\_\_

KEY WORDS \_\_\_\_\_

CROSS-REFS. \_\_\_\_\_

DECISION

CASE LAW CITATIONS \_\_\_\_\_

REMARKS \_\_\_\_\_

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

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

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:

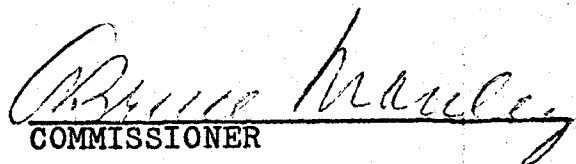
A. The business activities of the petitioner constitute the carrying on of an unincorporated business within the meaning and intent of Article 23 of the Tax Law, and the resulting income is subject to the unincorporated business tax.

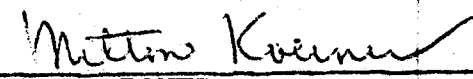
B. The notice of deficiency is sustained, and the petition is denied.

DATED: Albany, New York  
June 3, 1970

STATE TAX COMMISSION

  
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