STATE OF NEW YORK STATE TAX COMMISSION

(15) 7, Article 23 1971

Editor a gifair

In the Matter of the Petition

of

JACOB EDELMAN

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

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) 1963 :

State of New York County of Albany

, being duly sworn, deposes and says that Martha Funaro she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 8th day of , 1971, she served the within June Notice of Decision (or Determination) by (certified) mail upon Sigel & Lipcon, (representative of) the petitioner in the within C.P.A.'s proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Sigel & Lipcon, C.P.A.'s 1303 Clove Road 10301 Staten Island, 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

8th day of June , 1971.

Jack Funas

In the Matter of the Petition

of

JACOB EDELMAN

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

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) 1963:

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 8th day of June , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Jacob Edelman
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jacob Edelman
2058 Blanche Lane

Merrick, 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

8th day of June , 1971.

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JACOB EDELMAN DECISION

for a Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Year 1963.

The taxpayer petitioned for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1963. 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 27, The taxpayer appeared through Benjamin Sigel, C.P.A. and the Income Tax Bureau appeared through Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

FINDINGS OF FACT

- The issue in this matter is whether income received by the taxpayer from his activities as a sales representative is subject to the unincorporated business tax.
- The taxpayer, during the year in question represented the Louis Home Development Company, Inc. as a "canvasser." In this position, the taxpayer made door-to-door calls upon home owners for the purpose of gaining them as customers for Louis Home Development Company. Taxpayer performed his job along with another representative of the company. He was under no direction and control by the company as to the performance of his job.
- The taxpayer was paid by the Louis Home Development Company on a commission basis for work which was procured through his efforts. Taxpayer could draw \$150.00 each week against future commissions. Taxpayer was not reimbursed for any expenses. Taxes, social security and unemployment were not withheld from

his commissions. Taxpayer represented no other company and received no outside compensation.

4. On September 26, 1966, Notice of Deficiency No. 3-3644668 was issued against the taxpayer in the amount of \$316.47 plus penalty and interest. This deficiency was issued based upon a determination that the activities of the taxpayer were such as to subject his earnings to unincorporated business tax.

DECISION

- A. The relationship between the taxpayer and the Louis Home Development Company was not that of employee-employer. Income earned by the taxpayer through this relationship is subject to unincorporated business tax.
- B. The petition is, therefore, denied and the Notice of Deficiency No. 3-3644668 for the year 1963 is sustained, together with such interest and penalties as may be lawfully assessed.

DATED: Albany, New York

June 8, 1971.

STATE TAX COMMISSION

COMMISSIONER

COMMISSIONER MENCEY

COMMISSIONED