

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER A. GABAUER

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 and 1962

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

State of New York
County of Albany

Linda Wilson, 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 21st day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon PETER A. GABAUER (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Peter A. GaBauer
210 East 15 Street
New York, New York 10003
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

21st day of January, 1971

Paul H. Farnace

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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Linda Wilson, 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 21st day of January, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon PETER A.

GABAUER (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Archibald U. Braunfeld, C.P.A.
270 Madison Avenue
New York, New York 10016

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

21st day of January, 1971.

Michael J. Fennell

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER A. GABAUER	:	DECISION
for a Redetermination of a Deficiency	:	
or Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1961 and 1962	:	

Taxpayer filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law. A formal hearing was held before Francis X. Boylan, Hearing Officer, on November 10, 1969, at the offices of the State Tax Commission, in the City of New York. Taxpayer was represented by Archibald U. Braunfeld, CPA.

FINDINGS OF FACT

1. The issue is whether the activities of the taxpayer as a salesman constitute the carrying on of an unincorporated business.

2. On April 11, 1966 a notice of deficiency under file numbered 2-3706752 was issued by the Department of Taxation and Finance totaling \$567.47 for the years 1961 and 1962.

3. Taxpayer's principals are the Walker-Rackliff Company, New Haven, Connecticut and the Royal Pioneer Paper Box Manufacturing Company, Inc., Philadelphia, Pennsylvania, both manufacturers of paper products.

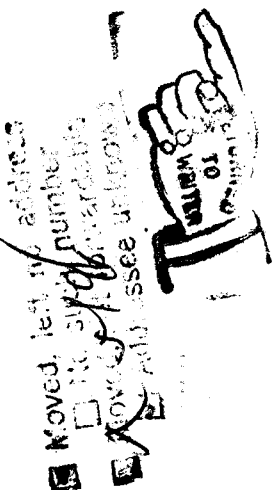
4. No particular hours, duties, regulations territories or divisions of time were established between petitioner and principal companies. The petitioner was permitted to carry on his sales activities by whatever methods he chose to follow.

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12226

CERTIFIED

No 237856

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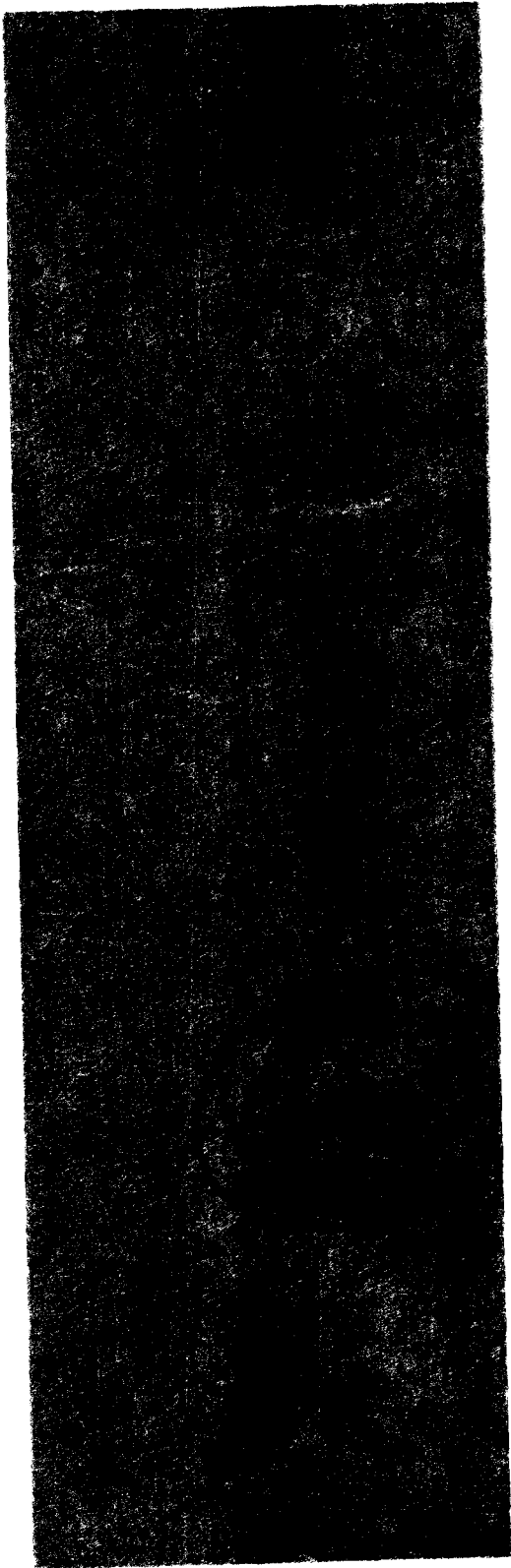


Mr. Peter A. Gabauer

210 East 15 Street

New York, New York 10003

RIGHT TO LIFE
TB. AIR POLLUTION



STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12226

CERTIFIED
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NEW YORK

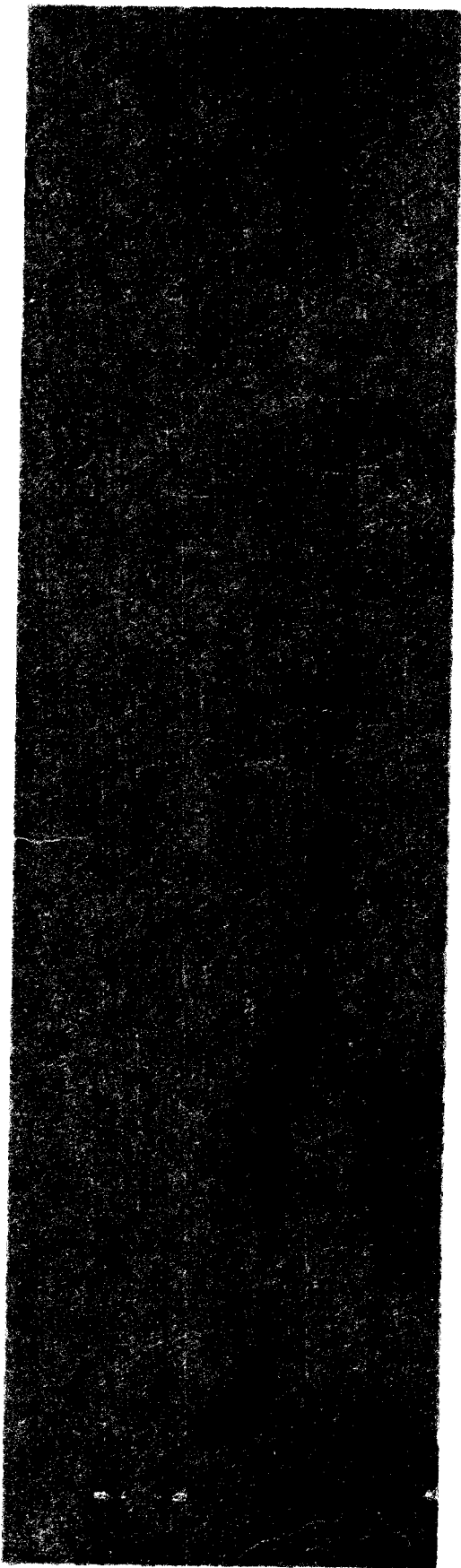
Mr. Archibald U. Braunfeld, C.P.A.

270 Madison Avenue

New York, New York 10016

FIGHT EMPHYSEMA
FIGHT AIR POLLUTION

☒ Under
New York
State Uniform
R. 100-13



5. Petitioner was reimbursed for part of his expenses by both companies. Taxpayer claimed additional unreimbursed expenses such as travel and telephone on his tax returns. Both companies withheld taxpayer's earnings, social security, income taxes, and paid unemployment insurance on his earnings. In addition, taxpayer collected employee back pay under the federal debtor law, when Walker-Rackliff got into financial difficulties.

6. Petitioner has failed to prove that there was direction and control over his activities by either principal consistent with an employer-employee relationship.

7. The petitioner was not an employee of either principal.

DECISION

A.. Petitioner's activities constitute the carrying on of an unincorporated business and the income received is subject to the unincorporated business tax.

B. The petition is denied and the deficiency is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

Norman E. L. L. L.
PRESIDENT

Wm. C. Bradley
COMMISSIONER

Wilton K. K.
COMMISSIONER