

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM GROGAN

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) 1964

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 25th day of August , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon William Grogan

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: William Grogan
49 Waverly Avenue
Eastchester, 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

25th day of August , 1971.

Martha Funaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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WILLIAM GROGAN

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) 1964 :

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 25th day of August , 19 71, she served the within Notice of Decision (or Determination) by (certified) mail upon Robert B. Goldberg, C.P.A. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert B. Goldberg, C.P.A.
c/o Martin Wolman & Co.
521 Fifth Avenue
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

25th day of August , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM GROGAN : DECISION
for Redetermination of Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Year 1964. :

Petitioner, William Grogan, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1964. (File No. 28401241). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 24, 1971, at 10:45 A.M. Petitioner appeared by Robert B. Goldberg, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert Rossi, Esq., of Counsel).

ISSUE

I. Did the selling activities of petitioner, William Grogan, during the year 1964, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, William Grogan, and his wife filed a New York State combined income tax return for the year 1964. He did not file a New York State unincorporated business tax return for said year.

2. On September 25, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, William Grogan, imposing unincorporated business tax upon the income received by him as salesman during the year 1964. It also disallowed certain business expense deductions, which disallowance is not being contested by petitioner. It further imposed a penalty in the sum of \$177.68 for failure to file unincorporated business tax

returns for said year. In accordance with aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,061.86.

3. During the year 1964, petitioner, William Grogan, was a printing salesman. He sold printing services for Grinnel Lithographic Co., Inc. and J. James Shea Sons, Inc. These firms were not affiliated. The services sold by him for each firm were non-competitive. He had no office or employees. He was not a stockholder or officer of either firm.

4. During the year 1964, petitioner, William Grogan's, selling activities on behalf of Grinnel Lithographic Co., Inc. consisted of selling printing services to volume printing accounts. He received a fixed salary of \$17,938.91. New York State and Federal income taxes and social security tax were withheld from his salary. He was covered for workmen's compensation and unemployment insurance. He was reimbursed for his expenses. He was required to work from 9:30 A.M. to 5:30 P.M. during the week. He devoted 90% of his working time to the firm's affairs. His immediate superior exercised strict control and supervision over his sales activities and to the time he devoted to sales. He was required to submit daily activity sheets showing where, when and upon whom he called. He was also required to call in during the day to report his whereabouts. He was further required to submit expense sheets showing in detail the expenses he incurred. The firm knew that he was also selling printing services for J. James Shea Sons, Inc., but he was not permitted to call on their customers during the normal working day.

5. During the year 1964, petitioner, William Grogan's selling activities on behalf of J. James Shea Sons, Inc. consisted of selling printing services to other than volume printing accounts. He received commissions of \$11,299.20. New York State and Federal income taxes and social security tax were withheld from the

commissions paid to him. He was covered for workmen's compensation, unemployment and medical insurance. He was not reimbursed for his expenses. On his Federal income tax return he deducted these expenses as employee business expenses. His allowable business expenses for the year were \$1,054.74. He devoted 10% of his working time to the firm's affairs. The majority of his sales activities for the firm were conducted during nonregular working hours. The firm did not exercise any control or supervision over his sales activities or to the time he devoted to sales.

CONCLUSIONS OF LAW

A. That the income received by petitioner, William Grogan, during the year 1964, from Grinnel Lithographic Co., Inc. constituted compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the income received by petitioner, William Grogan, during the year 1964, from J. James Shea Sons, Inc. constituted income from his regular business of selling printing services and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

C. That the aforesaid activities of petitioner, William Grogan, during the year 1964, on behalf of J. James Shea Sons, Inc. constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

D. That the petition of William Grogan is granted to the extent of reducing unincorporated business taxable income for the year 1964, from \$17,768.37 to \$2,863.56, and of reducing unincorporated business tax due from \$710.73 to \$114.54 and of reducing the penalty for failure to file an unincorporated business tax return from \$117.68 to \$28.63 and the Notice of Deficiency issued September 25, 1967, is

reduced from \$1,061.86 to \$229.18 together with such interest as may be due from September 25, 1967, and, except as so granted, the petition is in all other respects denied.

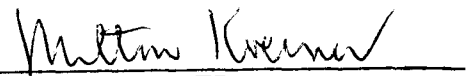
DATED: Albany, New York

August 25, 1971.

STATE TAX COMMISSION


COMMISSIONER


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