

STATE OF NEW YORK
STATE TAX COMMISSION

Jorgensen
O.B.T.
83

In the Matter of the Petition

of

ELLINAR JORGENSEN

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 13th day of January, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon ELLINAR

JORGENSEN (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Ellinar Jorgensen
7706 Colonial Road
Brooklyn, New York 11209

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

13th day of January, 1971

Barth S. Lucas

LW

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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Notice of Decision (or Determination) by (certified) mail upon ELLINAR

JORGENSEN (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Robert J. Stapleton
133 Plandome Road
Manhasset, New York 11030

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

13th day of January, 1971.

Maetha Turner

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
ELLINAR JORGENSEN : DECISION
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the years 1961 and 1962. :

Petitioner, Ellinar Jorgensen, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962 (file #2-8264234). A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on April 7, 1970 at 1:30 p.m. Petitioner, Ellinar Jorgensen, appeared by Robert J. Stapleton, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq. (Solomon Sies, Esq. of counsel).

FINDINGS OF FACT

1. Petitioner, Ellinar Jorgensen, and his wife filed joint New York State Income Tax Resident Returns for the years 1961 and 1962. He did not file any unincorporated business tax returns for the years 1961 and 1962.

2. On September 13, 1965, the Income Tax Bureau issued a statement of audit changes against petitioner, Ellinar Jorgensen, imposing unincorporated business taxes upon the income received by him from his activities as a salesman during 1961 and 1962 upon the ground that his sales activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law; and, accordingly, issued a notice of deficiency therefor in the sum of \$1130.53.

3. Petitioner, Ellinar Jorgensen, was a wire and rope salesman. He represented three unaffiliated firms in the sale of wire and rope. The items sold by him for each firm were non-competitive. He did not have a business telephone. He did not have his own business cards. On January 23, 1961, the Income Tax Bureau assessed unincorporated business taxes against him for the year 1959 on substantially the same facts, as in the instant case. On June 6, 1961, after an informal conference with the taxpayer, the Income Tax Bureau cancelled and withdrew the assessment.

4. During the years 1961 and 1962 the firms for whom petitioner, Ellinar Jorgensen, sold merchandise did not withhold federal or New York State income taxes or social security taxes and did not pay unemployment insurance or workmen's compensation insurance on his behalf. He was not reimbursed for any of his expenses. He did not receive a draw against commissions. On his 1961 and 1962 federal and New York State income tax returns, he deducted business expenses in connection with his sales activities. The firms did not exercise any control over him with respect to time spent or manner and means of effecting sales. He maintained an office in his home which he used for business purposes, in addition to the display of merchandise and the storage of records.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Ellinar Jorgensen, from the firms he represented during the years 1961 and 1962 constituted receipts from his regular business of selling wire and rope and not compensation as an employee exempt from the imposition of unincorporated business taxes in accordance with the meaning and intent of Section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Ellinar Jorgensen, during the years 1961 and 1962, constituted the carrying on of an unincorporated business and his income derived therefrom was

subject to unincorporated business taxes in accordance with the meaning and intent of Section 703 of the Tax Law.

C. That the Income Tax Bureau's determination after an informal conference that the petitioner, Ellinar Jorgensen, was not liable for unincorporated business taxes for the year 1959 is not res-judicata to a decision by the State Tax Commission on identical facts, that he is liable for unincorporated business taxes for the years 1961 and 1962. Sundberg v Murphy 39 Misc. 2d 967, 242 N.Y.S. 2d 329 (Sup. Ct., Albany Co., 1963).

D. That the petition of Ellinar Jorgensen for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962 is denied, and the notice of deficiency issued April 11, 1966, against petitioner, Ellinar Jorgensen, is sustained.

DATED: Albany, New York

January 17, 1967

STATE TAX COMMISSION

Norman Holman

COMMISSIONER

COMMISSIONER

Arthur Kerner

COMMISSIONER