

STATE OF NEW YORK
STATE TAX COMMISSION

Mourry, Richard
O.B. Tj
1971

In the Matter of the Petition

of

Richard Mourry

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) 1962, 63, 64 & 65

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 4th day of January , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Richard
Mourry (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Eugene Gibilaro
233 Broadway
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

4th day of January 1971.

James S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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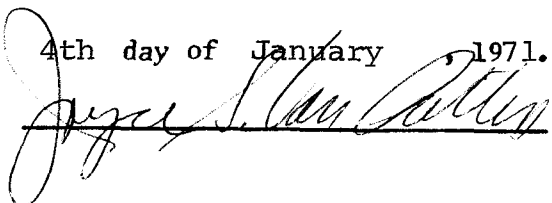
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Mourry (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Richard Mourry
92-81 Shore Road
Brooklyn, New York


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Sworn to before me this

4th day of January , 1971.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
RICHARD MOURRY :
for Redetermination of Deficiency :
or for Refund of Unincorporated :
Business Taxes under Article 23 of :
the Tax Law for the years 1962, :
1963, 1964 and 1965. :

DECISION

Petitioner, Richard Mourry, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1962, 1963, 1964 and 1965 (File #46259992). 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 September 24, 1970 at 3:00 P.M. Petitioner appeared by Eugene Gilbaro, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioner, Richard Mourry, and his wife filed New York State Income Tax Resident Returns for the years 1962, 1963, 1964 and 1965. He did not file any unincorporated business tax returns for those years.

2. On February 19, 1968, the Income Tax Bureau issued a statement of audit changes against petitioner, Richard Mourry, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1962 through 1965 upon the ground that his 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 \$1,501.65.

3. Petitioner, Richard Mourry, was a lingerie salesman during the years 1962 through 1965. He represented Radcliffe Lingerie

Corporation and its parent, L. V. Myles, in the sale of ladies lingerie in the Mid West United States. He was allowed by them to carry one non-competitive line for another firm simultaneously with their lines. He received a draw against commissions from all of the firms for whom he sold merchandise.

4. During the years 1962 through 1965, the firms for whom petitioner, Richard Mourry, sold ladies lingerie did not withhold Federal and New York State income taxes and Social Security Taxes from the commissions paid to him. He was not reimbursed for his expenses. On Schedule "C" of his Federal Income Tax returns he deducted business expenses in connection with his sales activities. The firms did not exercise any substantial supervision or control over his sales activities or techniques or over the time he devoted to sales, except to limit the geographic area in which he could sell.

5. During the years 1962 through 1965 the main office of Radcliffe Lingerie Corporation was located in New York City. Petitioner occupied a desk in its office. Telephone and stenographic services were paid for by the corporation. He did not have an office or regular place of business outside of the State of New York. Substantially, all of his sales were made outside of the State of New York. Most of the merchandise he sold was shipped from plants located outside of the State of New York directly to the customers. When he was not on the road selling merchandise he would work out of the New York Office. He also attended seven or eight sales meetings a year at the New York Office. The New York Office was the principal business office of the corporation.

CONCLUSIONS OF LAW

A. That since petitioner, Richard Mourry, did not have a regular place of business outside of the State of New York during the years 1962, 1963, 1964 and 1965, all of his business income, including the income derived from out of state sales during that period, was properly allocated to New York State in accordance with the meaning and intent of Section 707 (a) of the Tax Law.

B. That the income received by petitioner, Richard Mourry, from the firms he represented during the years 1962, 1963, 1964 and 1965 constituted receipts from his regular business of selling ladies

lingerie and not compensation as an employee exempt from 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, Richard Mourry, during the years 1962, 1963, 1964 and 1965 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 Richard Mourry is denied and the notice of deficiency issued February 19, 1968 is sustained.

DATED: Albany, New York
December 31, 1970

STATE TAX COMMISSION

Ernest Gallman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koenig
COMMISSIONER