

STATE OF NEW YORK  
STATE TAX COMMISSION

*Murphy - Joseph & Joyce*  
*U.B.T. (23)*

In the Matter of the Petition

of

JOSEPH P. MURPHY & JOYCE  
MURPHY

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) 1960, 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 JOSEPH P.  
MURPHY & JOYCE MURPHY (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Joseph P. & Joyce Murphy  
39 Fountain Avenue  
Rockville Centre  
Long 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

21st day of January, 1971.

*Bartha Funaro*

*Linda Wilson*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH P. & JOYCE MURPHY

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) 1960, 1961, :  
and 1962

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& JOYCE MURPHY (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Donald G. McKay, Esq.  
c/o McKay & O'Keefe, Esqs.  
50 E. 42 Street  
New York, New York 10017  
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
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the United States Post Office Department within the State of New York.

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known address of the (representative of the) petitioner.

Sworn to before me this

21st day of January, 1971.

Donald G. McKay

Linda Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
JOSEPH P. MURPHY & JOYCE MURPHY	:	DECISION
for a Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Years 1960,	:	
1961 and 1962	:	

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Petitioners Joseph P. Murphy and his wife Joyce Murphy have filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1960, 1961 and 1962 (File #2-7104266). A formal hearing was held before Francis X. Boylan, Hearing Officer, on June 12, 1969, at 1:30 p.m., at the offices of the State Tax Commission in New York City. Petitioners appeared by McKay and O'Keefe, Esqs., (Donald G. McKay, Esq., of counsel). The Income Tax Bureau appeared by Edward H. Best, Esq. (Alexander Weiss, Esq., of counsel).

FINDINGS OF FACT

1. Petitioners, Joseph P. Murphy and his wife Joyce Murphy, filed joint New York State income tax returns for the years 1960, 1961 and 1962. Petitioner, Joseph P. Murphy, did not file any unincorporated business tax returns for the years 1960, 1961 and 1962.

2. On April 11, 1966, the Income Tax Bureau issued a statement of audit changes against petitioner, Joseph P. Murphy, imposing unincorporated business tax upon the income received by him from his sales activities during 1960, 1961 and 1962 upon the ground that his sales activities constituted the carrying on of an unincorporated business in accordance with the provisions of Section 703 of the Tax Law, and accordingly issued a notice of deficiency therefor in the sum of \$1,469.54.

3. Joyce Murphy was not properly a party to the petition as a notice of deficiency was not issued against her.

4. During 1960 and 1961 and the first two and one-half months of 1962 petitioner, Joseph P. Murphy, was a salesman for more than one principal, selling printing services. The printing services sold by him were non-competitive. Petitioner Joseph P. Murphy was paid on a straight commission basis and was not reimbursed for his expenses, with the exception of one small amount in 1962. He solicited the same customers on behalf of each of the principals whom he represented. There was no supervision or control by any of his principals with respect to the time spent or the manner or means with which he was to perform his sales activities. Petitioner, Joseph P. Murphy, deducted \$8,834.51 as "non-reimbursed business expenses" on his 1962 federal income tax return. In 1960 one of his four principals and in 1961 and 1962 two of his three principals deducted withholding and social security taxes from his commissions.

5. On March 16, 1962, petitioner, Joseph P. Murphy, entered into an agreement with Lithographing Printing Mailing Corporation. Under the terms of the agreement he was employed as a "printing salesman" at a minimum wage of \$26,000.00 per annum. He was to receive a minimum draw of \$500 per week, less payroll deductions, as against commissions. Upon termination of his employment any overdraw did not have to be repaid. He agreed to devote his full time and best efforts to the performances of his duties as a printing salesman subject to the control of his employer. The company agreed to reimburse him for 50% of his expenses. He agreed to process all orders he obtained through the employer. He failed to show by documentary or other sufficient evidence that there was any supervision or control by Lithograph Printing Mailing Corporation of the time spent or the manner or means with which he was to perform his sales activities, except that he was not to solicit accounts of other salesmen of the company. He was never reimbursed for 50% of his expenses. The company deducted withholding and social security tax from his weekly advances.

#### CONCLUSIONS OF LAW

A. That during the years 1960, 1961 and 1962, petitioner, Joseph P. Murphy, was not an employee, but an independent contractor carrying on an

unincorporated business within the State of New York and that the income derived therefrom was subject to unincorporated business tax within the intent and meaning of Section 703 of the Tax Law.

B. That the petition of Joseph P. Murphy and Joyce Murphy for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1960, 1961 and 1962 is denied and the notice of deficiency issued April 11, 1966, against petitioner, Joseph P. Murphy, is sustained.

Dated: Albany, New York

*January 20, 1971*

STATE TAX COMMISSION

*Norman L. Gellerson*  
Commissioner

*Bruce M. Kaulay*  
Commissioner

*Milton Korman*  
Commissioner