

STATE OF NEW YORK
STATE TAX COMMISSION

Saveth, S. New York
O.D.T. - 23
1471

In the Matter of the Petition

of

SAUL SAVETH

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

Rae Zimmerman, 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 11th day of August, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon SAUL SAVETH

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Saul Saveth
215-31 26th Avenue
Bayside, 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

11th day of August, 1971

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

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of
SAUL SAVETH

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For a Redetermination of a Deficiency or
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Tax Law for the (Year(s) 1960, 1961 :
and 1962.

State of New York
County of Albany

Rae Zimmerman , 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 11th day of August , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Edmund A.

Koblentz, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Edmund A. Koblentz, Esq.
90 State Street
Albany, 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
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Linda Wilson

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SAUL SAVETH	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1960, 1961 and 1962.	:	

Petitioner, Saul Saveth, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1960, 1961 and 1962. (File No. 2-3323508). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 18, 1971, at 1:15 P.M. Petitioner appeared by Koblenz & Koblenz, Esqs. (Edmund A. Koblenz, Esq., of Counsel). The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did the selling activities of petitioner, Saul Saveth, during the years 1960, 1961 and 1962 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Saul Saveth, and his wife filed New York State income tax resident returns for the years 1960, 1961 and 1962. He did not file New York State unincorporated business tax returns for said years.

2. On April 11, 1966 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Saul Saveth, imposing unincorporated

business tax upon the income received by him from his activities as a sales representative during the years 1960, 1961 and 1962 and accordingly issued a Notice of Deficiency in the sum of \$8,579.87.

3. Petitioner, Saul Saveth, was a toy packaging salesman during the years 1960, 1961 and 1962. He received commission income from eleven firms during the year 1960, twelve firms during the year 1961, and ten firms during the year 1962. His method of operation was to sell a packaging concept which he had designed to a toy manufacturer. He would then arrange with either Famous Paper Box Co., Inc. or Tru-Bilt Novelty Co., Inc. to have them manufacture the basic box. He would arrange with the other principals for the production of the other component parts or services necessary to create the packaging concept, such as lithographing, cellophane, etc. The toy manufacturer would be billed by either Tru-Bilt Novelty Co., Inc. or Famous Paper Box Co., Inc. for the entire package and the other principals in turn would bill these two companies for the respective components that they had supplied. He received a commission on the sales of the component parts and on the value of the portion of the packaging supplied by Famous Paper Box Co., Inc. and Tru-Bilt Novelty Co., Inc.

4. Petitioner, Saul Saveth, received gross commissions of \$105,619.07 in 1960, \$125,726.07 in 1961, and \$89,487.25 in 1962. On his federal income tax returns he deducted expenses of \$41,325.42 in 1960, \$57,067.53 in 1961 and \$35,960.97 in 1962. Included in these expenses were large deductions for a work studio, art work and models, commissions paid, supplies and stationery, gifts and

entertaining. He was not reimbursed for any of his business expenses. During the years 1960 and 1961 Tru-Bilt Novelty Co., Inc., and during the years 1960, 1961 and 1962 Famous Paper Box Co., Inc. withheld federal and New York State income taxes and social security tax from the commissions paid to him. The commission income from these two companies represented less than 10% of his total commission income. The other principals did not withhold any taxes. They did not carry unemployment or workmen's compensation insurance for him. The various principals from whom he received commissions did not exercise any substantial control or supervision over his sales activities or techniques or to the time he devoted to sales.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Saul Saveth, from the various principals that he represented during the years 1960, 1961 and 1962 constituted income from his regular business of designing toy packaging concepts and selling the various components thereof 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.

B. That the aforesaid activities of petitioner, Saul Saveth, during the years 1960, 1961 and 1962 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Saul Saveth is denied and the Notice of Deficiency issued April 11, 1966 is sustained.

DATED: Albany, New York

August 11, 1971

STATE TAX COMMISSION

Norman Isellman

COMMISSIONER

Robert Manley

COMMISSIONER

Milton Koehn

COMMISSIONER