

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ANTHONY DEL CASINO

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) 1963 & 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 2nd day of March , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Anthony Del Casino

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

wrapper addressed as follows: Anthony Del Casino
15 Lynwood Drive
Scarsdale, 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

2nd day of March , 1972

Lynne Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ANTHONY DEL CASINO

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) 1963 & 1964 :

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OF NOTICE OF DECISION
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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 2nd day of March, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Orland, Chase
& Mucci (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Orland, Chase & Mucci
6 East 45th Street
New York, New York 10017

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

2nd day of March, 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 2, 1972

**Anthony Del Casino
15 Lynwood Drive
Scarsdale, New York**

Please take notice of the **Decision** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ANTHONY DEL CASINO	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the years 1963 and 1964.	:	

Petitioner, Anthony Del Casino, 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 1963 and 1964 (File #16572284). 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 October 29, 1970 at 2:45 P.M. Petitioner appeared by Orland, Chase & Mucci (Paul Orland, of Counsel). The Income Tax Bureau appeared by Edward H. Best, Esq. (Solomon Sies, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioner, Anthony Del Casino, and his wife filed New York State Income Tax Resident returns for the years 1963 and 1964. He did not file any Unincorporated Business Tax returns for those years.

2. On April 10, 1967 the Income Tax Bureau issued a statement of audit changes against petitioner, Anthony Del Casino, imposing unincorporated business tax upon the income received by him from his activities as a sales representative during the years 1963 and 1964 upon the grounds that these 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 \$686.59.

3. During the years 1963 and 1964, petitioner, Anthony Del Casino, was a commission salesman selling a variety of industrial products. During these years, he represented five unaffiliated principals.

4. During the year 1963, two of the five principals for whom petitioner, Anthony Del Casino, sold merchandise withheld New York State and Federal withholding taxes and social security taxes from the commissions paid to him. During the year 1963, one of the five principals withheld said taxes. In 1962, taxes were withheld on less than 50% and in 1964 on approximately 66% of his gross commission income. On Schedule "C" of his 1961 and 1962 Federal income tax returns, he deducted business expenses in connection with his sales activities. He was not required to submit periodic reports of his sales activities. These firms did not exercise any control over him as to the time spent or the manner or means by which he was to perform his sales activities. He had no written employment contracts.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Anthony Del Casino, from the firms he represented during the years 1963 and 1964 constituted receipts from his regular business of selling industrial products and not compensation as an employee exempt from imposition of unincorporated business tax in accordance with the meaning and intent of section 703(f) of the Tax Law.

B. That the aforesaid activities of petitioner, Anthony Del Casino, during the years 1963 and 1964 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.

C. That the petition of Anthony Del Casino is denied and the Notice of Deficiency issued April 10, 1967, is sustained.

DATED: Albany, New York
March 2, 1970

STATE TAX COMMISSION

Norman Gallivan
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER