

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDISON & GOLDBERG

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 and 1963

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Lynn 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 29th day of November , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon EDISON &
GOLDBERG (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Edison & Goldberg
1180 Albert Road
North Bellmore, New York 11710
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

29th day of November , 1972

Joyce S. Van Patten

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDISON & GOLDBERG

AFFIDAVIT OF MAILING
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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 and 1963

State of New York
County of Albany

Lynn 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 29th day of November , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon HAROLD J.
MITLER, C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Harold J. Mitler, C.P.A.
185 Great Neck Road
Great Neck, New York 11021

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

29th day of November , 1972

Lynn Wilson
James S. Van Ratten



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
November 29, 1972

Mison & Goldberg
1180 Albert Road
North Bellmore, New York 11710

Gentlemen:

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,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EDISON & GOLDBERG	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1962 and 1963.	:	

Edison & Goldberg filed a petition for refund of personal income taxes paid after the issuance of a deficiency notice under Article 22 of the Tax Law for the years 1962 and 1963.

A hearing was duly held at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Harold J. Mitler, C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by Francis X. Boylan, Esq.

The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case are whether petitioners maintain an office outside of the State of New York so as to be able to allocate income to sources outside of the State and, if so, then whether a proper allocation can be computed.

FINDINGS OF FACT

1. Edison & Goldberg is a partnership organized in New York with its principal places of business located at 1180 Albert Road, North Bellmore, New York, the residence address of Edwin A. Goldberg, a partner and at 36 Charlotte Lane, Scarsdale, the residence of Merrill A. Edison, the other partner. It began business in

February, 1962, and ceased business in August, 1963, being succeeded by a corporation, the Edgo Corporation, also organized in New York, and which files a franchise tax return. The firm filed returns for unincorporated business tax for both years on which they allocated their income partly to out-of-state sources.

2. Petitioner is the exclusive sales representative of Montclair Furniture Company, Inc., located in Claremont, North Carolina. Besides sales and distribution duties, petitioner selects and purchases fabrics, designs merchandise, and participates in the formation of company policy. It is compensated by a 7% commission on all sales of Montclair and it bears its own expenses. About 38% of Montclair's sales are delivered to New York State.

3. Montclair has a semi-annual show at its Claremont factory where it maintains a showroom. Each show lasts about two weeks. About 85% of all orders are taken at this location. Necessarily the petitioner's partners must attend such shows. There is an office at this factory for petitioner's use. It is about 25 feet by 40 feet with two desks and space for samples. About one-half of the time, one of the partners is at the Montclair showroom. Their duties there include checking delivery schedules and answering telephone inquiries. They pay nothing to Montclair for the use of these premises. The rest of their time is spent visiting accounts to solicit new business and take complaints.

4. Petitioners deducted travel expenses on their tax returns and such expenses included travel to Claremont and lodging during their visits there.

5. The deficiency, the payment of which is in issue, amounts to \$1,921.06 plus interest of \$257.95 for a total of \$2,179.01.

CONCLUSIONS OF LAW

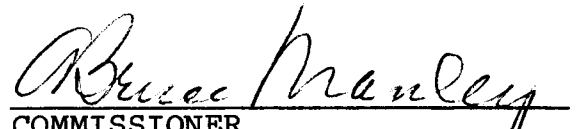
The Montclair premises cannot be considered an office of the petitioner-partnership as distinguished from an office of petitioner's primary principle. The petition is denied. The deficiencies were proper and any refund is denied.

DATED: Albany, New York
November 29, 1972

STATE TAX COMMISSION



COMMISSIONER



COMMISSIONER



COMMISSIONER