STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD GANZ

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) 1964, 1965 & 1966

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 August, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Richard Ganz (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Richard Ganz
1501 N.E. 191st Street
North Miami Beach, Florida 33162

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 August, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD GANZ

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) 1964, 1965 & 1966

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 August, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Samuel Rubin, 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: Samuel Rubin, C.P.A.
228 Montague Place
South Orange, New Jersey 07079

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 August, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 2, 1972

Richard Ganz
1501 N.E. 191st Street
North Miami Beach, Florida 33162

Dear Mr. Ganz:

Please take notice of the DECISION of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 722 of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 4 Months from 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 relative hereto may be addressed to the undersigned. These will be referred to the proper party for reply.

Very truly yours,

Nigel G. Wright

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD GANZ	:	DECISION
for a Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Years 1964, 1965 and 1966.	:	

Richard Ganz filed a petition pursuant to sections 722 and 689 of the Tax Law for a redetermination of a deficiency issued under date of January 18, 1971, for the taxable years 1964 and 1966 and for refunds for the taxable years 1965 and 1966 of unincorporated business taxes under Article 23 of the Tax Law.

A hearing was held on October 15, 1971 and on May 15, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Samuel Rubin, C.P.A. represented petitioner, who did not appear himself. Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel) represented the Income Tax Bureau.

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

ISSUE

The issue in this case is whether an outside salesman is subject to unincorporated business tax and, if he is, whether some of his income is allocable to other states.

FINDINGS OF FACT

1. Mr. Ganz represented three companies, each on a commission basis, during the taxable years in question: Henry, Leonard & Thomas, Inc. of Greensboro, North Carolina, distributors of "Dr. Grabow's Pre-Smoked Pipes", which accounted from one-half of two-thirds of petitioner's commissions, and which withheld taxes and social security

on a weekly draw against commissions of $180.00 a week, and reported the remainder of the compensation on a Federal Form 1099; Missouri Meerschaum Company of Washington, Missouri, manufacturers of "Missouri Meerschaum" corn cob pipes, which accounted from one-third to one-half of petitioner's commissions, and which withheld no taxes; and Whiz Manufacturing Co., a division of Eastern Briar Pipe Co., of Brooklyn, New York, distributors of pipe accessories, which accounted for only about two or three percent of petitioner's commissions and which withheld no taxes.

2. Mr. Ganz covers a territory of Metropolitan New York, New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia, and West Virginia.

3. Mr. Ganz incurs expenses, mostly for travel, equal to about one-fifth of his commissions, none of which is reimbursed.

4. The petitioner did not appear at the hearing and there is no evidence in the record of the details of his trips or convention attendence or required reports. Letters from each of his three principals claim that each had direction and control but such statements are conclusory.

5. The petitioner failed to file an unincorporated business tax return on advice of his representative.

6. The deficiency dated January 18, 1971, is in the amount of $1,960.66 against which a credit of $309.74 is applied for a balance due of $1,650.92. This includes, for 1964, unincorporated business taxes in the amount of $1,190.77 plus interest of $411.40 and a penalty (under section 685(a) of the Tax Law for failure to file a return) of $297.69 for a total of $1,899.86. For 1965, a correct tax is computed in the amount of $1,147.10 and because $1,388.05 was paid with the return, a refund of $240.95 plus interest of $68.79 for a total of $309.74 has been computed and allowed in the computation of the

deficiency. The petitioner requests refund of the entire amount paid of $1,388.05 for 1965. For 1966, a deficiency is asserted of $49.61 plus interest of $11.19, for a total of $60.80, of which $35.43 plus applicable interest is personal income tax, which is not contested, and $14.18 plus applicable interest is unincorporated business tax, which is contested. The petitioner also requests refund of $1,095.30, the amount of unincorporated business tax paid with the return.

CONCLUSIONS OF LAW

While the issue is a close one, at least with respect to the one principal, Henry, Leonard & Thomas, there is not sufficient evidence on the part of the petitioner to carry the burden of proof that he is subject to direction and control and is an employee. There is, furthermore, no evidence that petitioner maintains an office outside of the State, so as to be entitled to an allocation. However, the penalty will be waived since petitioner relied upon advice which was not totally unreasonable. The petition is, therefore, granted solely for the waiver of penalty and is otherwise denied. Any refund is denied. The deficiency, without penalty, is affirmed and is due, together with such further interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York
August 2, 1972.

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER

STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226
AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 2, 1972

Richard Ganz
1501 N.E. 191st Street
North Miami Beach, Florida 33162

Dear Mr. Ganz:

Please take notice of the DECISION of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to Section(s) 722 of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 4 Months from 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 relative 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

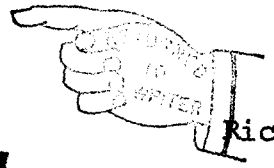
Enc.

cc: Petitioner's Representative
Law Bureau

AD 32 (5-71) 50M

STATE OF NEW YORK
Department of Taxation and Finance
STATE CAMPUS
ALBANY, N. Y. 12227

No Such Number
624280



CERTIFIED
No. 592682
MAIL

Richard Ganz

1051 N.E. 191st Street

North Miami Beach, Florida 33162

Mr. Rod

MEMORANDUM

TO: Mr. Louis Etlinger, Chief, Review Unit
Att: Floyd Worden
Income Tax Bureau
Room 104, Building #8

DATE: 8/21/72

FROM:
Hearing Unit
Room 214A, Building #9

RE: Richard Ganz
1501 N.E. 191st Street
No. Miami Beach, Fla. 33162

SOCIAL SECURITY NO.

Please advise as to the last known address for the above named taxpayer.

Nigel G. Wright
Hearing Officer

Taxpayer's last known address is:

No return filed 1970
1971

address per 1969 return
1501 NE 191 st
N. Miami Beach, Fla 33162

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RICHARD GANZ	:	DECISION
for a Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the Tax Law for the Years 1964, 1965 and 1966.	:	

Richard Ganz filed a petition pursuant to sections 722 and 689 of the Tax Law for a redetermination of a deficiency issued under date of January 18, 1971, for the taxable years 1964 and 1965 and for refunds for the taxable years 1965 and 1966 of unincorporated business taxes under Article 23 of the Tax Law.

A hearing was held on October 15, 1971 and on May 15, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Samuel Rubin, C.P.A. represented petitioner, who did not appear himself. Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel) represented the Income Tax Bureau.

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

ISSUE

The issue in this case is whether an outside salesman is subject to unincorporated business tax, and, if he is, whether some of his income is allocable to other states.

FINDINGS OF FACT

1. Mr. Ganz represented three companies, each on a commission basis, during the taxable years in question: Henry, Leonard & Thomas, Inc. of Greensboro, North Carolina, distributors of "Dr. Grabow's Pre-Smoked Pipes", which accounted from one-half of two-thirds of petitioner's commissions, and which withheld taxes and social security

STATE OF NEW YORK

TAX TRIBUNAL

In the Matter of the Petition

of

RICHARD [illegible]

For a Redetermination of a Deficiency or for Refund of Unincorporated Business Taxes under Article 23 of the New York Tax Law for the Years 1966, 1967 and 1968.

Petitioner

Pursuant to sections 722 and 689 of the Tax Law for a redetermination of a deficiency issued under date of January 10, 1971, for the taxable years 1964 and 1967 and for refunds for the taxable years 1965 and 1968 of unincorporated business taxes under article 23 of the Tax Law.

A hearing was held on October 15, 1971 and on May 1, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Alfred G. Wright, Hearing Officer. Samuel Rubin, C.P.A. represented petitioner, who did not appear himself. Edward F. Moss, Esq., Francis X. Boylan, Esq., of Counsel, represented the Income Tax Bureau.

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

ISSUE

The issue in this case is whether an outside salesman is subject to unincorporated business tax, and, if he is, whether some of his income is allocable to other states.

FINDINGS OF FACT

1. Mr. [illegible] represented three companies, each on a commission basis, during the taxable years in question: [illegible], Leonard & Thomas, Inc. of Greensboro, North Carolina, distributors of Jac. Greenwald's Pre-Soaked Jeans", which consisted of [illegible] two-[illegible] of [illegible] customer's commissions, and which included taxes and normal security

on a weekly draw against commissions of $180.00 a week, and reported the remainder of the compensation on a Federal Form 1099; Missouri Meerschaum Company of Washington, Missouri, manufacturers of "Missouri Meerschaum" corn cob pipes, which accounted from one-third to one-half of petitioner's commissions, and which withheld no taxes; and Whiz Manufacturing Co., a division of Eastern Briar Pipe Co., of Brooklyn, New York, distributors of pipe accessories, which accounted for only about two or three percent of petitioner's commissions and which withheld no taxes.

2. Mr. Ganz covers a territory of Metropolitan New York, New Jersey, Pennsylvania, Delaware, Maryland, the District of Columbia, and West Virginia.

3. Mr. Ganz incurs expenses, mostly for travel, equal to about one-fifth of his commissions, none of which is reimbursed.

4. The petitioner did not appear at the hearing and there is no evidence in the record of the details of his trips or convention attendence or required reports. Letters from each of his three principals claim that each had direction and control but such statements are conclusory.

5. The petitioner failed to file an unincorporated business tax return on advice of his representative.

6. The deficiency dated January 18, 1971, is in the amount of $1,960.66 against which a credit of $309.74 is applied for a balance due of $1,650.92. This includes, for 1964, unincorporated business taxes in the amount of $1,190.77 plus interest of $411.40 and a penalty (under section 685(a) of the Tax Law for failure to file a return) of $297.69 for a total of $1,899.86. For 1965, a correct tax is computed in the amount of $1,147.10 and because $1,388.05 was paid with the return, a refund of $240.95 plus interest of $68.79 for a total of $309.74 has been computed and allowed in the computation of the

on a wholly new basis of computations of profits a week and computing the remainder of the compensation on a [illegible] Fair Labor Standards Act overtime compensation basis. Essentially, manufacturers of [illegible] "merchandise" from one plant, which [illegible] of production's requirements, and which withheld no taxes, to Manufacturing Co., a division of Eastern Dyeing Co., in Brooklyn, New York, distributors of dye supplies, which [illegible] about two or three percent of production's requirements, [illegible] and which withheld no taxes.

2. Mr. Cary covers a territory of Pennsylvania, New Jersey, Delaware, Maryland, Delaware, Virginia, Maryland, the District of Columbia and West Virginia.

3. Mr. Cary income averages, mostly for travel, about [illegible] one-fifth of his commissions, none of which is returned.

4. The petitioner did not appear at the hearing and there is no evidence in the record as to the nature of his duties or supervision, attendance or required reports. [illegible] petitioners claim that such distribution are [illegible] and are consistent.

5. The petitioner failed to file an income tax return on advice of his accountant.

6. The deficiency dated January 30, 1947, [illegible] the amount of $1,[illegible].85, against which a credit of $[illegible] is applied for a balance due of $1,[illegible].85. This deficiency, for 1943, [illegible] taxes in the amount of $[illegible] plus taxes of $[illegible] and a [illegible] (under section 661(a) of the Tax Law for failure to file a return) of $237.[illegible] for a total of $1,[illegible]. [illegible] a notice [illegible] in the amount of $1,[illegible] and [illegible] with the return a refund of $[illegible] plus interest [illegible] has been computed and allowed in the computation of the

deficiency. The petitioner requests refund of the entire amount paid of $1,388.05 for 1965. For 1966, a deficiency is asserted of $49.61 plus interest of $11.19, for a total of $60.80, of which $35.43 plus applicable interest is personal income tax, which is not contested, and $14.18 plus applicable interest is unincorporated business tax, which is contested. The petitioner also requests refund of $1,095.30, the amount of unincorporated business tax paid with the return.

CONCLUSIONS OF LAW

While the issue is a close one, at least with respect to the one principal, Henry, Leonard & Thomas, there is not sufficient evidence on the part of the petitioner to carry the burden of proof that he is subject to direction and control and is an employee. There is, furthermore, no evidence that petitioner maintains an office outside of the State, so as to be entitled to an allocation. However, the penalty will be waived since petitioner relied upon advice which was not totally unreasonable. The petition is, therefore, granted solely for the waiver of penalty and is otherwise denied. Any refund is denied. The deficiency, without penalty, is affirmed and is due, together with such further interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York
August 2, 1972.

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Manley
COMMISSIONER

Milton Koerner
COMMISSIONER