

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DANIEL GLADSTONE

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 4th day of April, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon DANIEL GLADSTONE

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

wrapper addressed as follows: Mr. Daniel Gladstone  
2501 Harbor Lane  
Bellmore, 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

4th day of April, 1972.

Martha Furus

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DANIEL GLADSTONE

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 4th day of April, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon SIDNEY H. COHEN, ESQ.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Sidney H. Cohen, Esq.

10 East 40th Street  
New York, New York 10036

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

4th day of April, 1972.

Martha F. Jones

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

BUILDING 9, ROOM 214A

STATE CAMPUS  
ALBANY, N. Y. 12227

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  
April 4, 1972

Mr. Daniel Gladstone  
2501 Harbor Lane  
Ballimore, New York

Dear Mr. Gladstone:

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** 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 relating 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

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In the Matter of the Petition	:	
of	:	
DANIEL GLADSTONE	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1962 and 1963.	:	

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Petitioner, Daniel Gladstone, 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 1962 and 1963.

(File No. 24277545). 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 August 18, 1971, at 9:20 A.M. Petitioner appeared by Sidney H. Cohen, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did petitioner, Daniel Gladstone's, activities as a sales manager for Iron Art Corp. during the years 1962 and 1963 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Daniel Gladstone, and his wife filed New York State income tax resident returns for the years 1962 and 1963. He did not file New York State unincorporated business tax returns for said years.

2. On July 28, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Daniel Gladstone, imposing unincorporated business tax upon the income received by him from his business activities during the years 1962 and 1963. It also imposed a penalty of \$156.22 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,002.29.

3. During the years 1962 and 1963 Iron Art Corp. was engaged in the retail sale of iron railings. It would advertise its product in newspapers. Salesmen would be sent to customers who called in response to the advertisement. If a sale was made, the corporation would then install the iron railings. The salesmen were paid on a commission basis.

4. During the years 1962 and 1963 petitioner, Daniel Gladstone, was the sales manager for Iron Art Corp. It was the only firm for whom he rendered services. He hired, trained and fired salesmen. He directed customer calls to various salesmen. He placed the advertising with the newspapers. He checked on whether or not salesmen sold jobs and whether or not they were honest. He was in charge of sixteen salesmen. He reported directly to Mr. Sachs the owner of the company. He generally worked from 9:00 A.M. to 5:00 or 6:00 P.M. at the corporation's office. The corporation supplied him with an office and a secretary. On various occasions he would go to customers with the salesmen in order to help train them. He also maintained an

office in his home which he used principally to make telephone calls to arrange appointments for the salesmen with customers who could not be reached during the normal working day.

5. During the years 1962 and 1963, petitioner, Daniel Gladstone, was not paid by Iron Art Corp. on a commission basis. He received as compensation \$250 or \$300 a week plus a year end bonus and the payment of the monthly payments due to a bank on his automobile. He was allowed vacation and sick leave. No deductions were made by the corporation for Federal and New York State income taxes or social security tax from the compensation paid to him. He was not reimbursed for any business expenses he incurred. He deducted these expenses on Schedule "C" of his federal income tax returns.

CONCLUSIONS OF LAW

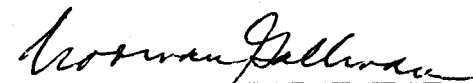
° A. That the income received by petitioner, Daniel Gladstone, from Iron Art Corp. during the years 1962 and 1963 constituted compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the petition of Daniel Gladstone is granted and the Notice of Deficiency issued July 28, 1969 is cancelled.

DATED: Albany, New York

*April 4, 1972.*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER