

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GARRY J. HEARN

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

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) 1965, 1966 :
and 1967

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 3rd day of May , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon

Garry J. Hearn (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Garry J. Hearn
193 Menands Road
Loudonville, New York 12211

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

3rd day of May , 1972.

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
GARRY J. HEARN

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

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)) 1965, 1966
and 1967

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 3rd day of May , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon

David McGibbon (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: David McGibbon

600 Franklin Street
Schenectady, 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

3rd day of May , 19 72

Lynn Wilson

Rae Zimmerman



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
May 3, 1972

Garry J. Hearn
193 Menands Road
Loudonville, New York 12211

Dear Mr. Hearn:

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

In the Matter of the Petition	:	
of	:	
GARRY J. HEARN	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1965, 1966 and 1967.	:	

Petitioner, Garry J. Hearn, 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 1965, 1966 and 1967. (File No. 74984998). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York on September 8, 1971. On said date, petitioner and his representative waived a formal hearing and requested the State Tax Commission to decide the case on the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did petitioner, Garry J. Hearn's, activities as a branch manager for Kelly Girl Service, Inc. during the years 1965, 1966 and 1967 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Garry J. Hearn, and his wife filed New York State income tax resident returns for the years 1965, 1966 and 1967. 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, Garry J. Hearn, imposing unincorporated business tax upon his income from Kelly Girl Service, Inc., during the years 1965, 1966 and 1967. It also imposed a penalty in the sum of \$386.69 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 \$2,135.21.

3. Petitioner, Garry J. Hearn, entered into contract with Kelly Girl Service, Inc. in October, 1961. He was appointed manager of a branch office of said corporation located at Latham, New York. He was granted a territory consisting of Saratoga, Rensselaer, Albany and Schenectady counties. The business activity consisted of operating a temporary employee employment agency. This contract together with subsequent modifications as to the commission rate was in effect during the years 1965, 1966 and 1967. Under the terms of the contract and in actual practice he was required to supply at his own expense office space, furniture and equipment, and sales and office personnel. He assigned the temporary employees to jobs, handled customer and employee complaints and did some personal solicitation of business.

He hired temporary employees in conformity with standards set by the corporation. The temporary employees were paid directly by the corporation at wage rates set by it. He assisted the corporation in the collection of slow accounts. The corporation furnished the stationery. Petitioner's name did not appear on the stationery or on the office door. The corporation paid advertising costs. The corporation designated the hours he was to keep the branch open.

The telephone was listed in the name of the corporation, but paid for by the petitioner. He was paid on a commission basis

based upon the monthly gross profit of the office. He did not receive a commission on unpaid accounts. Federal and New York State income taxes and social security tax were not deducted from the commissions paid to him. The contract specifically provided that he was not to be considered an employee of the corporation. The contract could be terminated by the corporation at any time.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Garry J. Hearn, as a branch manager for Kelly Girl Service, Inc., during the years 1965, 1966 and 1967 constituted income from his regular business of operating a temporary employee employment agency and not 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 aforesaid activities of petitioner, Garry J. Hearn, during the years 1965, 1966 and 1967 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 Garry J. Hearn is denied and the Notice of Deficiency issued July 28, 1969, is sustained.

DATED: Albany, New York

May 3, 1972

STATE TAX COMMISSION

Norman Ballou

COMMISSIONER

Bruce M. Macey

COMMISSIONER

Walter Kramer

COMMISSIONER

...the ...
...the ...
...the ...
...the ...
...the ...

...the ...
...the ...
...the ...
...the ...
...the ...

...the ...
...the ...
...the ...
...the ...
...the ...

...the ...
...the ...
...the ...
...the ...
...the ...

...the ...
...the ...
...the ...
...the ...
...the ...