

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN HOLLAND

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

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 26th day of July , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Marvin Holland

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

2749 Covered Bridge Road  
Merrick, New York 11566

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

26th day of July , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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Tax Law for the (Year(s) 1964

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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 26th day of July , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Ira Levy, 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: Ira Levy, C.P.A.  
276 Fifth Avenue  
New York, New York 10001

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

26th day of July , 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  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**July 26, 1972**

**Marvin Holland**  
**2749 Covered Bridge Road**  
**Merrick, New York 11566**

**Dear Mr. Holland:**

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 deci-  
sion 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,

**Paul B. Coburn**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
MARVIN HOLLAND : DECISION  
for Redetermination of Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law for :  
the Year 1964. :

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Petitioner, Marvin Holland, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1964. (File No. 26223196). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, for June 15, 1971, at 9:15 A.M. On said date, petitioner's representative, Ira Levy, C.P.A. advised the State Tax Commission, in writing, that petitioner waived a formal hearing and requested that it decide the case upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did Petitioner, Marvin J. Holland's selling activities during the year 1964 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Marvin Holland, and his wife, filed a New York State income tax resident return for the year 1964. He did not file a New York State unincorporated business tax return for said year.

2. On January 29, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Marvin Holland, imposing unincorporated business tax upon the income received by

him from his activities as a salesman during the year 1964, and accordingly issued a Notice of Deficiency in the sum of \$948.91. On August 23, 1968, the Income Tax Bureau sent a letter to him reducing his unincorporated business tax liability plus accrued interest to said date to \$404.88. The reduction resulted from the allowance of certain business expenses not previously allowed.

3. Petitioner, Marvin Holland, was an optical frame salesman during the year 1964. He represented three unaffiliated firms. He derived in excess of 90% of his gross commissions from one of the firms. He did not have any employees.

4. During the year 1964, the firms for whom petitioner, Marvin Holland, sold optical frames did not withhold Federal and New York State income taxes from the commissions paid to him. The firm from whom he derived 90% of his gross commissions withheld social security tax on less than 10% of his gross commission income. He was not reimbursed for any of his business expenses. He reported a self-employed retirement deduction on his 1964 Federal income tax return. He failed to prove that the firms for whom he sold merchandise exercised substantial supervision and control over his sales activities and techniques or over the time that he devoted to sales.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Marvin Holland, during the year 1964 constituted income from his regular business of selling optical frames 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, Marvin Holland, during the year 1964 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 Marvin Holland is denied and the Notice of Deficiency issued January 29, 1968, as modified by the Income Tax Bureau letter of August 23, 1968, is sustained.

DATED: Albany, N.Y.

*July 26, 1972*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Mouley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koehn*  
\_\_\_\_\_  
COMMISSIONER