

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD H. INGERSOLL

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) 1962, 1963, :  
1964, 1965 and 1967.

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 11th day of July , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon RICHARD H.  
INGERSOLL (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Richard H. Ingersoll  
247 Fishers Road  
Pittsford, New York 14534

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

11th day of July , 19 72

Ral Zimmerman

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

RICHARD H. INGERSOLL

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business:  
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Tax Law for the (Year(s) 1962, 1963, :  
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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 11th day of July, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon HERBERT F.  
ROGERS, ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Herbert F. Rogers, Esq.  
5 Court Street  
Canandaigua, New York 14424

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

11th day of July, 1972.

Rae Zimmerman

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

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

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
July 11, 1972

Mr. Richard H. Ingersoll  
247 Fishers Road  
Pittsford, New York 14534

Dear Mr. Ingersoll:

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,

*L. Robert Leisner*  
**L. Robert Leisner**  
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	:	
RICHARD H. INGERSOLL	:	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, 1963, 1964, 1965 and	:	
1967.	:	

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Richard H. Ingersoll petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1962, 1963, 1964, 1965 and 1967.

A formal hearing was held at the offices of the State Tax Commission, Rochester, New York on July 13, 1971, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Herbert F. Rogers, Esq., and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq., of Counsel).

#### ISSUES

Were salaries from two of four corporations for whom taxpayer did work so interrelated to the taxpayers other business activities as to be subject to unincorporated business tax and were petitioner's commissions subject to the unincorporated business?

#### FINDINGS OF FACT

1. Petitioner, Richard H. Ingersoll, timely filed New York State income tax returns for the years 1962, 1963, 1964, 1965 and 1967. With the exception of the year 1967, he filed no unincorporated

business tax returns.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1962, 1963, 1964 and 1965 was issued against the taxpayer under File No. 48035229 and File No. 72206114 for 1967.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. Petitioner received sales commissions during the years in issue from Block Brothers, Kathdin Plywood and Atlas Plywood. These commissions were:

1962	\$ 7,624.61
1963	9,847.23
1964	7,948.13
1965	12,791.97
1967	16,277.83

5. Petitioner was Regional Sales Manager for the container division of Atlas Plywood Corporation.

6. Kathdin Plywood was a plywood manufacturing concern in Maine.

7. Block Brothers of Great Valley, New York manufactured pallets and skids.

8. Baring Corp. of Dayton, Ohio was a broker.

9. Titian Box Corp. of Liverpool, New York made a general line of wooden crates, skids, solid lumber, block plywood, paper and wood combinations and plywood and lumber corporations.

10. Petitioner was the president, general manager and a stockholder of Titian Box Corp. At the end of each fiscal year, besides

his salary, petitioner was given a bonus of 15% before taxes.

11. Petitioner owned 50% of the Baring Corporation and he was paid a salary by the Baring Corporation of Dayton, Ohio.

12. The petitioner was paid the following salaries:

	<u>Baring Corp.</u>	<u>Titian Box Corp.</u>
1962	\$ 5,832.72	\$14,811.31
1963	6,271.81	17,462.46
1964	15,150.00	16,531.17
1965	17,910.00	15,982.97
1967	6,600.00	24,073.75

13. The petitioner was the president and general manager of Titian Box Corp. and he supervised all its operations including manufacturing, estimates, designs and interpreting blue prints as well as sales. There were 40 employees on its regular shift.

14. Although the taxpayer reported his 1967 salary from Titian Box Corp. as unincorporated business income and paid tax thereon in conformity with the earlier Notice of Deficiency for the years 1962 through 1965, at the hearing he asserted his salary as an officer and employee of the corporation was not subject to unincorporated business tax.

15. The work done as a corporate officer and as an employee was separate and apart from petitioner's other income producing activities during the years in issue.

#### CONCLUSIONS OF LAW

A. The commissions paid to the petitioner by Block Brothers, Kathdin Plywood and Atlas Plywood during the years in issue as enumerated in paragraph number four above were subject to unincorporated business taxes.

B. The salaries paid to the petitioner, as an officer and employee, by the Titian Box Corp. and the Baring Corporation were not subject to unincorporated business tax.

C. In 1967, the inclusion of salary income resulted in an overpayment of unincorporated business tax and petitioner is entitled to a refund or credit for that year.

D. The deficiencies in unincorporated business tax as modified herein are sustained for all other years.

E. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York

*July 11, 1972*

STATE TAX COMMISSION

*Norman Gelman*  
COMMISSIONER

*Bruce Bradley*  
COMMISSIONER

*Milton Koerner*  
COMMISSIONER