

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RAYMOND J. LARKIN

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) 1961 & 1962 :

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 5th day of December , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Raymond J. Larkin

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

wrapper addressed as follows: Raymond J. Larkin
78 Jackson Street
Garden City, 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

5th day of December , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RAYMOND J. LARKIN

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) 1961 & 1962 :

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 5th day of December , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Abe J. Millman

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

wrapper addressed as follows: Abe J. Millman
63 Waterbury Lane
Westbury, Long Island, 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

5th day of December , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

December 5, 1972

Raymond J. Larkin
78 Jackson Street
Garden City, New York

Dear Mr. Larkin:

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

Please take further notice that pursuant to **section 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 relat-
ing 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	:	
RAYMOND J. LARKIN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1961 and 1962.	:	

Petitioner, Raymond J. Larkin, 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 1961 and 1962. (File No. 2-4173451). 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 September 26, 1972, at 1:15 P.M. Petitioner appeared by Abe J. Millman, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did petitioner, Raymond J. Larkin's selling activities for Donovan Industries, Inc. during the years 1961 and 1962 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Raymond J. Larkin, filed New York State income tax resident returns for the years 1961 and 1962. He also filed New York State unincorporated business tax returns for said years. He included in total receipts on his 1961 unincorporated business tax return, commission income received from Irving Tannings in the sum of \$33,724.88 and from J. Lichman and Sons in the sum of \$9,580.46.

He omitted from total receipts on said return, commission income of \$6,297.33 received from Donovan Industries, Inc. He included in total receipts on his 1962 unincorporated business tax return commission income received from J. Lichman and Sons in the sum of \$8,222.61 and from Kray Tanning in the sum of \$9,672.16. He omitted from said return, commission income of \$6,443.72 received from Donovan Industries, Inc.

2. On August 9, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Raymond J. Larkin, imposing additional unincorporated business tax for the years 1961 and 1962 in the sum of \$590.19 upon the grounds that the commission income received by him from Donovan Industries, Inc. was subject to the unincorporated business tax. It also imposed additional personal income tax for the year 1961 in the sum of \$215.05 based upon a Federal audit, which adjustment is not being contested by him. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$948.32.

3. Petitioner, Raymond J. Larkin, was a leather goods salesman during the years 1961 and 1962. He sold leather goods in each of said years for the various unaffiliated firms set forth in paragraph "1". The products sold by him for each firm were non-competitive.

4. During the years 1961 and 1962, only Donovan Industries, Inc. withheld Federal and New York State income taxes and social security tax from the commissions paid to petitioner, Raymond J. Larkin. He was not reimbursed for any of his business expenses. He deducted these business expenses on his unincorporated business tax returns. The firms for whom he sold merchandise did not exercise

any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales.

CONCLUSIONS OF LAW

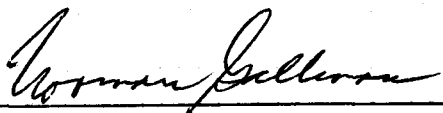
A. That the income received by petitioner, Raymond J. Larkin, from Donovan Industries, Inc. during the years 1961 and 1962 constituted income from his regular business of selling leather goods and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

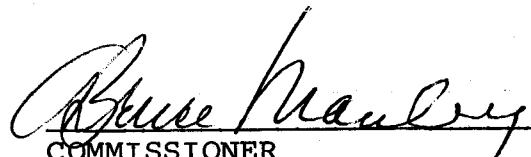
B. That the aforesaid activities of petitioner, Raymond J. Larkin, during the years 1961 and 1962 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Raymond J. Larkin is denied and the Notice of Deficiency issued August 9, 1965, is sustained.

DATED: Albany, New York
December 5, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER