

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

PHILIP MONHEIT

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

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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 26th day of April, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon PHILIP MONHEIT

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

Philip Monheit  
11 Brookfield Road  
New Hyde Park, 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

26th day of April, 1972

Heather Flanders

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

PHILIP MONHEIT

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

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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 26th day of April , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon MILTON MALTZ, 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: Milton Maltz, C.P.A.  
30 East 42nd Street  
New York, 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

26th day of April , 1972.

Martha F. [Signature]

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 26, 1972**

**Mr. Philip Monheit**  
**11 Brookfield Road**  
**New Hyde Park, New York**

**Dear Mr. Monheit:**

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,

*Nigel G. Wright*  
**Nigel G. Wright**  
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	:	
PHILIP MONHEIT	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1964.	:	

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Philip Monheit filed a petition for redetermination of a deficiency in unincorporated business taxes under Article 23 of the Tax Law for the year 1964.

A hearing was held on June 23, 1971, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York City. Milton Maltz, C.P.A. represented the petitioner. Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether amounts received as a salary by petitioner were received for services which constitute part of his unincorporated business within the meaning of section 703(b) of the Tax Law.

FINDINGS OF FACT

1. Mr. Monheit filed a return for unincorporated business taxes in 1964 on income of \$10,316.08 received from the business of "diamond importing". Mr. Monheit purchased and imported large sized

rough diamonds which were then cut and sold by him to dealers who supplied retail jewelers. These stones usually would be used as "solitaires" in engagement rings. He has been in this business since 1943.

2. Petitioner was retained by Belgo African Diamonds, Inc. as a salesman. He received wages of \$7,800 from Belgo in 1964 and both income taxes and social security were withheld from these wages. He had no financial interest in Belgo. Belgo is a dealer in "chips", small diamonds which were purchased in Belgium and sold to manufacturers of jewelry.

3. Mr. Monheit had an office at 36 West 47th Street with a receptionist. This is paid for in part by Belgo. The receptionist is paid by Belgo. The office had work tables and turning wheels. As is the custom in the trade, Mr. Monheit contracted with technicians to come to his office to cut and polish the larger stones.

4. The customers for the solitaire diamonds are completely different from the customers for Belgo.

5. The deficiency in issue is dated January 22, 1968, and \$319.71 plus interest of \$53.12 for a total of \$372.83.

#### CONCLUSIONS OF LAW

The services in question were performed as part of petitioner's unincorporated business. It is clear from testimony that Belgo retained petitioner because he was already engaged in the diamond business. Furthermore, there is no evidence in the record that Belgo supervised the petitioner's day-to-day methods of operations and no other evidence that would tend to show that petitioner was truly an employee.

DECISION

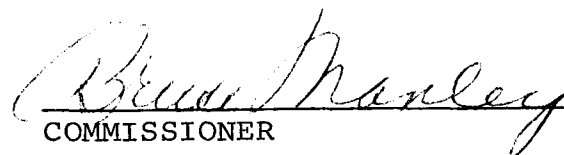
The petition is denied and the deficiency is found due together with such interest, if any, as may be due under section 684 of the Tax Law.

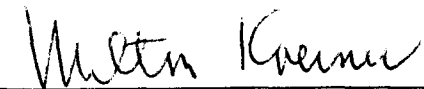
DATED: Albany, New York

*April 26, 1972.*

STATE TAX COMMISSIONER

  
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COMMISSIONER

  
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