

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN D. NOONAN

:
:
:
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 25th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon

John D. Noonan (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: John D. Noonan
7 Butler Place
Garden City, Long Island, N.Y. 11530

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

25th day of April, 1972.

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN D. NOONAN

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 25th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon

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

Alvin I. Goidel, Esq.
111 Fulton Street
New York, New York 10038

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

25th day of April, 1972.

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
April 25, 1972

John D. Noonan
7 Butler Place
Garden City, Long Island, N.Y. 11530

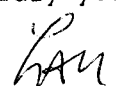
Dear Sir:

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,


Lawrence A. Newman
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN D. NOONAN	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

John D. Noonan filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966 and 1967.

A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on July 21, 1971.

The petitioner appeared and was represented by Alvin I. Goidel, Esq. The Income Tax Bureau was represented by Edward H. Best, Esq. (Solomon Sies, Esq., of Counsel).

ISSUE

Whether the petitioner's business activities as a manufacturer's sales representative constitutes the carrying on of a business subject to the unincorporated business tax.

FINDINGS OF FACT

1. The petitioner, John D. Noonan, and Elaine Noonan, his wife, filed New York State income tax resident returns for the years 1965, 1966 and 1967 and did not file unincorporated business tax returns

for the years in issue.

2. On October 27, 1969, the Income Tax Bureau issued a Notice of Deficiency, under file numbered 84065677, for the years 1965, 1966 and 1967, in the amount of \$2,981.02, plus statutory interest. The deficiency was based on a determination that the petitioner's business activities constituted the carrying on of a business subject to the unincorporated business tax.

3. A petition for redetermination was timely filed.

4. The petitioner is a sales representative for several manufacturers of noncompeting lines of household furniture. The petitioner's area included the greater New York Metropolitan Area, all of New Jersey, part of Maryland, Delaware, and the City of Philadelphia. The area was an exclusive territory assigned to the petitioner by his principals. The manufacturers would require the presence of the petitioner at their booths at the various trade shows and would want to be assured that the petitioner was devoting adequate time toward promoting their respective products with potential customers. The principals reserved the right to dismiss the petitioner if he carried any line of merchandise that was in basic competition with theirs. The petitioner would choose the time for vacation, usually during periods of seasonal lows in activity. Social security and income taxes were not withheld by any of the principals.

5. On his Federal and New York State income tax returns, the petitioner lists his commission receipts as business income. Federal Schedule "C" (Profit from business or profession) accompanies

the petitioner's Federal returns for the years in issue, upon which deductions are taken for unreimbursed expenses, such as lodging, fares, telephone, automobile mileage, etc. A report of self-employment income is also included.

6. The petitioner's principals do not exercise the usual degree of supervision and control consistent with an employer-employee relationship.

7. The petitioner is not an employee of his principals.

DECISION

A. The petitioner's business activities as a manufacturer's sales representative constitutes the carrying on of an unincorporated business, and the income derived therefrom is subject to the unincorporated business tax.

B. The Notice of Deficiency is sustained, and the petition for redetermination is denied.

DATED: Albany, New York

April 25, 1972

STATE TAX COMMISSION

Norman Baller

COMMISSIONER

Bruce W. Vancey

COMMISSIONER

Milton Kravitz

COMMISSIONER