

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EUGENE ROGLIANO

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) 1963, 1964 &
1965

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 7th day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Eugene Rogliano

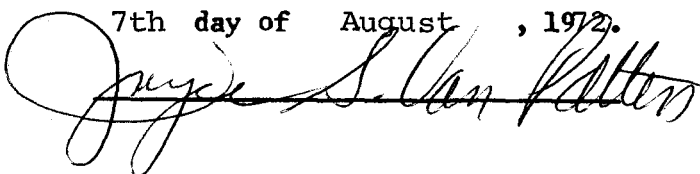
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Eugene Rogliano
18 Edgewood Road
Scarsdale, New York

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

7th day of August , 1972.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EUGENE ROGLIANO

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) 1963, 1964 &
1965

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 7th day of August , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Irving Silverman,
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: Irving Silverman, C.P.A.
950 Sylvan Avenue
Mamaroneck, 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

7th day of August , 1972.

George S. Van Ratten

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

August 7, 1972

**Eugene Rogliano
18 Edgewood Road
Scarsdale, New York**

Dear Mr. Rogliano:

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

Please take further notice that pursuant to **section 722**
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	:	
EUGENE ROGLIANO	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1963, 1964 and 1965.	:	

Petitioner, Eugene Rogliano, 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 1963, 1964 and 1965. (File No. 46212938). 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 May 5, 1972, at 1:00 P.M. Petitioner appeared by Irving Silverman, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of Counsel).

ISSUE

Did petitioner, Eugene Rogliano's selling activities for Raskin Packing Co., Inc. and Stamford Dressed Beef Co. during the years 1963, 1964 and 1965 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Eugene Rogliano, filed New York State income tax resident returns for the years 1963, 1964 and 1965. He did not file New York State unincorporated business tax returns for said years.

2. On August 21, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Eugene Rogliano, imposing unincorporated business tax upon the income received by him from his activities as sales agent in the sum of \$702.00 for the year 1963, \$289.47 for the year 1964, and \$477.60 for the year 1965. It also increased his originally reported income of \$16,537.50 for the year 1963 by the sum of \$11,012.50 as per a federal audit. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,689.65.

3. Subsequent to the formal hearing, the Income Tax Bureau consented to reducing the additional income for the year 1963 from \$11,012.50 to \$1,496.00 in conformity with subsequent federal audit adjustments. This reduced "corrected business income" for the year 1963 on the Statement of Audit Changes from \$27,550.00 to \$18,033.50.

4. Petitioner, Eugene Rogliano, was a sales agent for Stamford Dressed Beef Co. during the years 1963, 1964 and 1965. Stamford Dressed Beef Co. was a meat wholesaler that sold dressed beef to retailers. He acted as their sales agent primarily in Connecticut. He received a draw of \$200.00 a week against commissions. Federal and New York State income taxes and social security tax were withheld from the draw against commissions. He guaranteed to Stamford Dressed Beef Co. the accounts receivable of the customers he sold to.

5. Petitioner, Eugene Rogliano, was also a sales agent for Raskin Packing Co., Inc. of Sioux City, Iowa, during the years 1963, 1964 and 1965. Raskin Packing Co., Inc. was a meat packer that sold carloads of beef to meat wholesalers. Petitioner acted

as their sales agent in the eastern United States. Federal and New York State income taxes and social security tax were withheld from the compensation paid to him.

6. The firms for whom petitioner, Eugene Rogliano, sold meat products during the years 1963, 1964 and 1965, did not reimburse him for his business expenses. He maintained an office in his home from which he conducted his business. His business expenses included in excess of \$3,000.00 a year in telephone bills. The firms for whom he sold meat products did not exercise any substantial supervision and control over his sales activities and techniques or over the time he devoted to sales except to limit the territory in which he could sell.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Eugene Rogliano, from Raskin Packing Co., Inc. and Stamford Dressed Beef Co. during the years 1963, 1964 and 1965, constituted income from his regular business of selling beef products 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, Eugene Rogliano, during the years 1963, 1964 and 1965 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 Eugene Rogliano is granted to the extent of reducing "corrected business income" for the year 1963 from \$27,550.00 to \$18,033.50 and of reducing unincorporated business tax due for said year from \$702.00 to \$377.07 together with such interest as may be lawfully due and the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued August 21, 1967, and, except as so granted, the petition is in all other respects denied.

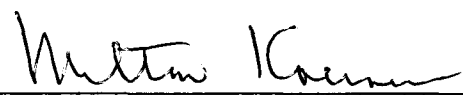
DATED: Albany, New York

August 7, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER