

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PETER GILBERT

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) 1967

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 2nd day of November , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Peter Gilbert

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

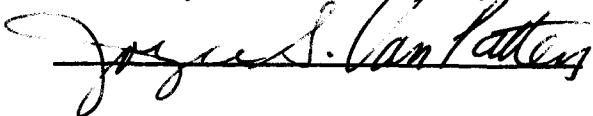
wrapper addressed as follows: Mr. Peter Gilbert
29 Split Rock Drive
Kings Point, New York 11024

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

2nd day of November , 1973.





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STATE TAX COMMISSION

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a Refund of Unincorporated Business
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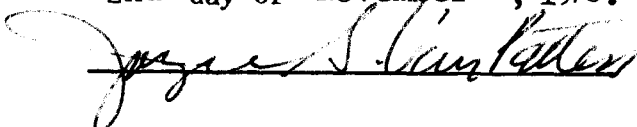
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 2nd day of November , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Frederick
Wertheimer, C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Frederick Wertheimer, C.P.A.
400 Madison Avenue
New York, New York 10017

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

2nd day of November , 1973.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Mario A. Procaccino,

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York
November 2, 1973

Mr. Peter Gilbert
29 Split Rock Drive
Kings Point, New York 11024

Dear Mr. Gilbert:

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 deci-
sion must be commenced within **4 Months**
from 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 relative
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

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PETER GILBERT	:	
for Redetermination of Deficiency or for	:	DECISION
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Year 1967.	:	

Petitioner, Peter Gilbert, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1967. (File No. 72300582). 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 October 19, 1972, at 9:15 A.M. Petitioner appeared by Frederick Wertheimer, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq., of Counsel).

ISSUE

Were the services rendered by petitioner, Peter Gilbert, during the year 1967 as an employee of Automatic Metal Products Corporation so interrelated and integrated with his activities in connection with his unincorporated business as an electronic components salesman so as to constitute part of a business regularly carried on by him?

FINDINGS OF FACT

1. Petitioner, Peter Gilbert, filed a New York State unincorporated business tax return for the year 1967. He omitted from

business income on said return salary income in the sum of \$52,611.90 received from Automatic Metal Products Corporation during said year. He listed his kind of business as "sales representative" on said return.

2. On February 22, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Peter Gilbert, imposing unincorporated business tax in the sum of \$2,104.48, upon the salary income of \$52,611.90 received by him during the year 1967 from Automatic Metal Products Corporation upon the grounds that said income was business connected and accordingly issued a Notice of Deficiency in the sum of \$2,464.66.

3. During the year 1967 Automatic Metal Products Corporation was engaged in the manufacture of electronic components consisting primarily of coaxial connections.

4. Between January 1, 1967 and April 24, 1967, petitioner, Peter Gilbert, was employed by Automatic Metal Products Corporation as vice president and sales manager at a salary of \$200.00 a week. He did not own any stock in the corporation. He also acted as a sales representative for the corporation. He was supplied with an office and a secretary by the corporation. Commissions earned on sales made by him and override commissions earned on sales of other company salesmen supervised by him were paid by Automatic Metal Products Corporation to a corporation owned by him and his wife known as Gilbert Enterprises, Inc. He reported the income from Gilbert Enterprises, Inc. as subchapter S income on his 1967 Federal

income tax return.

5. On April 24, 1967, petitioner, Peter Gilbert, together with a group of associates, acquired all of the capital stock of Automatic Metal Products Corporation. He personally acquired in excess of 50% of said stock and became president of the corporation. Between April 24, 1967 and October 31, 1967, he received salary payments from the corporation totaling \$41,264.00. Gilbert Enterprises, Inc. did not receive any commission payments for sales made by him or by salesmen under his supervision for Automatic Metal Products Corporation subsequent to April 24, 1967.

6. On November 1, 1967, petitioner, Peter Gilbert, and his associates sold their stock in Automatic Metal Products Corporation to Alloys Unlimited, Inc. Automatic Metal Products Corporation became a wholly owned subsidiary of Alloys Unlimited, Inc. Alloys Unlimited, Inc. was a public corporation. At the same time he entered into an employment contract with Automatic Metal Products Corporation. Performance of the agreement and payment of compensation was guaranteed by Alloys Unlimited, Inc. He was employed as president and chief executive officer. He was to devote his full time to said duties. He was to receive a salary of \$50,000.00 a year plus a percentage of the profits. He was permitted to devote a minimal amount of time to supervising the activities of PGM Component Sales, Inc. an Illinois corporation, which acted as a manufacturer representative in the Midwest. It was wholly owned by him. Between November 1, 1967 and December 31, 1967, he received \$7,948.00 in

salary from Automatic Metal Products Corporation.

7. During the period from January 1, 1967 through October 31, 1967, petitioner, Peter Gilbert, conducted an unincorporated business as a salesman of electronic components for five other firms besides Automatic Metal Products Corporation. At least two of these firms were corporations owned by him. One of these firms was Gilbert Enterprises, Inc. which was receiving commission payments on sales made by him for Automatic Metal Products Corporation. He discontinued his activities as a commission sales representative for these firms as of November 1, 1967. He, however, after November 1, 1967, received some commissions payments for sales made prior to said date.

CONCLUSIONS OF LAW

A. That the services rendered by petitioner, Peter Gilbert, as an officer of Automatic Metal Products Corporation during the period from January 1, 1967 through October 31, 1967, were so integrated and interrelated with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him and, therefore, the salary received by him for services as an officer of said corporation during said period was not exempt from 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, Peter Gilbert, during the period January 1, 1967 through October 31, 1967, 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 petitioner, Peter Gilbert, was not engaged in the

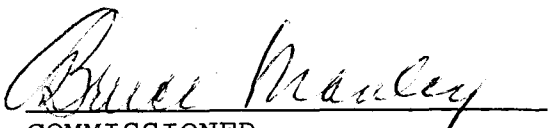
carrying on of an unincorporated business during the period from November 1, 1967 to December 31, 1967, and, therefore, the salary received by him as an officer of Automatic Metal Products Corporation during said period was exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

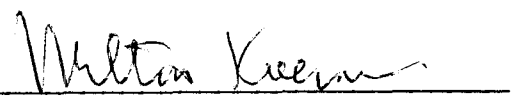
D. That the petition of Peter Gilbert is granted to the extent of reducing salary income from Automatic Metal Products Corporation for the year 1967, subject to the unincorporated business tax from \$52,611.90 to \$44,663.90 and of reducing the amount of unincorporated business tax due from \$2,104.48 to \$1,786.56 together with such interest as may be lawfully due; that the Income Tax Bureau is hereby ordered to accordingly modify the Notice of Deficiency issued February 22, 1971, and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
November 2, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER