

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HAROLD G. WILLIAMS, JR.

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 & 1967

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 4th day of April , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Harold G. Williams,
Jr.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Harold G. Williams, Jr.
Griswold Road
Rye, New York 10580

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

4th day of April , 1974

James S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD G. WILLIAMS, JR.

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 & 1967

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 4th day of April , 19 74 she served the within
Notice of Decision (or Determination) by (certified) mail upon Philip Geller, 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: Philip Geller, C.P.A.
295 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

4th day of April , 1974

James S. Patterson

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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
~~MARIO A. PROCACCINO~~
~~MILTON KOERNER~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

April 4, 1974

Mr. Harold G. Williams, Jr.
Griswold Road
Rye, New York 10580

Dear Mr. Williams:

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,

Nigel G. Wright

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD G. WILLIAMS, JR.

for a Redetermination of a Deficiency or
for Refund of Personal Income and
Unincorporated Business Taxes under
Articles 22 and 23 of the Tax Law for
the Years 1965, 1966 and 1967.

DECISION

Harold G. Williams, Jr., filed a petition for the redetermination of a deficiency issued under date of July 27, 1970, in the amount of \$2,583.25, plus interest of \$416.64 and a penalty under section 685(a) of the Tax Law of \$555.37, for a total of \$3,555.26, for both personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1965, 1966 and 1967. (The principle amount of the income tax deficiency, \$361.74, has been paid and is no longer in dispute).

A hearing was held on October 31, 1972, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York City. Philip Gelber, C.P.A. represented petitioner. Saul Heckelman, Esq., appearing by Albert Rossi, Esq., represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether or not petitioner is conducting an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Harold G. Williams, Jr., did not file a return for unincorporated business taxes for the years in question.

2. Petitioner received income from the Vigo Steamship Corporation of 76 Beaver Street, New York City. This was in the form of wages on which income taxes were withheld. Petitioner was the sole stockholder and principal officer of six other corporations located at the same address. These corporations reimbursed Vigo for petitioner's services when petitioner worked for them. The business of the corporation was to ship ocean freight in international trade. It did not, however, own any ships and it did not have any goods of its own which had to be shipped. The deficiency herein does not include this salary income.

3. Petitioner received income from a business described as "freight transportation". This was carried on at the 76 Beaver Street offices of the Vigo Corporation. He had expenses attributable to such income of about 10% thereof. The net income of such income he declared as business income on his individual tax returns. This amounted to \$17,863.75 in 1965, \$17,342.36 in 1966 and \$26,558.62 in 1967. Petitioner's activities in this business were to locate both cargos and ships on behalf of Vigo and the six related corporations. He did no work for any other business. This income came to petitioner in the form of checks

drawn by Vigo Steamship Corporation or one of its related corporations. Typically, Vigo would pay the owner of a ship a rental price less a 5% "discount". The amount of this "discount" would be paid to two parties: 3 1/2% to a "broker" who had found the ship and 1 1/2% to petitioner. The petitioner himself has characterized these payments as "commissions" and his capacity as an "agent".

4. Petitioner did not appear or testify at the hearing and was not available for cross-examination.

5. Petitioner's father was in the same or similar business before him and such business was held subject to unincorporated business tax.

CONCLUSIONS OF LAW

Petitioner clearly regards himself as, and is in fact, an independent contractor with regard to the income he received from "freight transportation". The fact that he owns the corporations who pay the commissions is of no consequence. (See Schirrmeister's Estate v. State Tax Commission, 7 N.Y. 2d 708.) Whether these amounts are characterized as "commissions" or "discounts" is of no consequence.

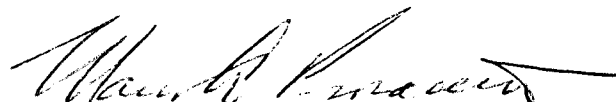
The penalty herein is clearly justified.


The deficiency is found to be correct and is due together with such further interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York

April 4, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER