

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH G. ELPHAND and GLORIA ELPHAND

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 (8) 23 of the  
Tax Law for the Year(s) 1966 and 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 17th day of July , 1974 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Joseph G. Elphand  
& Gloria Elphand (XXXXXXXXXXXX) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. & Mrs. Joseph G. Elphand  
3883 Turtle Creek Boulevard  
Dallas, Texas 75219

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 (XXXXXXXXXXXX)  
(X) petitioner herein and that the address set forth on said wrapper is the last  
known address of the (XXXXXXXXXXXX) petitioner.

Sworn to before me this

17th day of July 1974.

*James S. Van Patten*

*Martha Funaro*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

JOSEPH G. ELPHAND and GLORIA ELPHAND

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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 (6) 23 of the  
Tax Law for the Year(s) 1966 and 1967.:  
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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 17th day of July , 1974 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Carl Fischbein,  
Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Carl Fischbein, Esq.

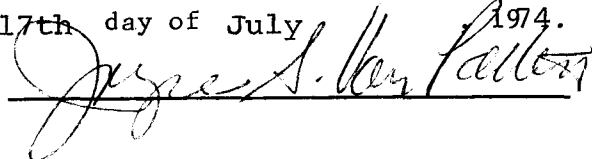
1710 Fourth National Bank Building  
Tulsa, Oklahoma 74119

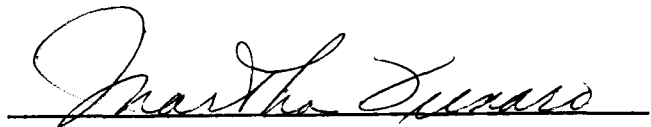
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Post Office Department within the State of New York.

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

17th day of July 1974.

  
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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

~~Mario A. Procaccino~~  
~~MEMBER OF THE TAX INQUIRY, PRESIDENT~~

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

**DATED:** Albany, New York  
**July 17, 1974**

**Mr. & Mrs. Joseph G. Elphand**  
**3883 Turtle Creek Boulevard**  
**Dallas, Texas 75219**

**Dear Mr. & Mrs. Elphand:**

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

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|---|---|----------|
| In the Matter of the Petition               | : |          |
| of  | : |          |
| JOSEPH G. ELPHAND and GLORIA ELPHAND        | : | DECISION |
| for a Redetermination of a Deficiency or    | : |          |
| for Refund of Unincorporated Business Taxes | : |          |
| under Article 23 of the Tax Law for the     | : |          |
| Years 1966 and 1967.                        | : |          |

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Petitioners, Joseph G. Elphand and Gloria Elphand, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1966 and 1967. (File No. 79238206). A calendar call was scheduled by Commissioner Koerner at the offices of the State Tax Commission, 2 World Trade Center, New York, New York, for April 1, 1974 at 10:15 A.M. On March 22, 1974, petitioners' representative, Carl Fischbein, executed a written waiver of formal hearing and requested that the State Tax Commission render the following decision after due consideration of said record.

ISSUES

I. Did petitioner, Joseph G. Elphand's activities as a multi-line commission salesman during the years 1966 and 1967, constitute the carrying on of an unincorporated business?

II. If petitioner, Joseph G. Elphand, was carrying on an unincorporated business during the years 1966 and 1967, what portion of the income derived therefrom should be allocated to New York State?

FINDINGS OF FACT

1. Petitioners, Joseph G. Elphand and Gloria Elphand, filed a New York State income tax resident return in the year 1966, and a New York State income tax nonresident return in the year 1967. They did not file New York State unincorporated business tax in said years.

2. On May 26, 1969, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Joseph G. Elphand and Gloria Elphand, imposing unincorporated business tax on petitioner, Joseph G. Elphand's commission sales activities upon the grounds that petitioner's business activities constituted the carrying on of an unincorporated business and, therefore, is subject to the unincorporated business tax under Article 23 of the Tax Law. In accordance with the Statement of Audit Changes, it issued a Notice of Deficiency in the amount of \$1,078.17.

3. Petitioners, Joseph G. Elphand and Gloria Elphand, resided in New York State for the entire year 1966 and until March 14, 1967. During both these years, petitioner, Joseph G. Elphand, represented four manufacturers on a commission basis. Two of these manufacturers maintained their principal place of business in California, and two in New York. There is no proof that he maintained an office in a place other than in New York State. There is no proof that he sold one hundred percent of his merchandise exclusively outside of the State of New York. There is no proof that the displays maintained at trade and fashion shows in Texas and the State of Florida constituted the carrying on of a business outside of the State of New York.

4. That petitioner, Gloria Elphand, had no connection with petitioner, Joseph G. Elphand's sales activities.

CONCLUSIONS OF LAW

A. That the aforesaid activities of petitioner, Joseph G. Elphand, during the years 1966 and 1967 constituted the carrying on of an unincorporated business, and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

B. That since petitioner, Joseph G. Elphand, failed to prove the existence of a regular place of business outside of the State of New York during the years 1966 and 1967, all business income, including the income derived from out-of-state sales during said years, was properly allocated to New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

C. That since petitioner, Gloria Elphand, was not a party to said unincorporated business, the Notice of Deficiency assessed against her is hereby cancelled.

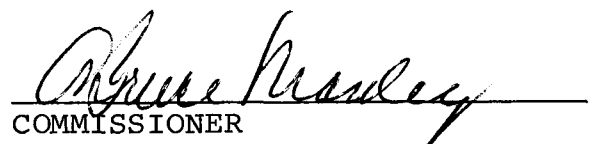
D. That the petition of Joseph G. Elphand is denied and except as so modified, the Notice of Deficiency issued on May 26, 1969 is sustained.

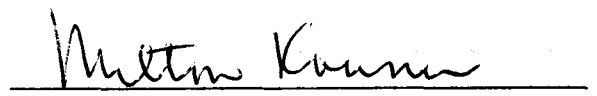
DATED: Albany, New York

July 17, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER