

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EVERETT J. FAHEY & MARION E. FAHEY

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) 1964

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 3rd day of October , 1974 , she served the within Notice of Decision (or Determination) by (certified) mail upon Everett J. Fahey & Marion E. Fahey (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Everett J. Fahey
R.D. 315A
North Hampton Colony
Sag Harbor, 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

3rd day of October , 1974.

Ant Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EVERETT J. FAHEY and
MARION E. FAHEY

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)~~ 1964 :

State of New York
County of Albany

Janet Mack, 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 1st day of October , 1974 , she served the within
Notice of Decision (or Determination) by ~~(certified)~~ mail upon Louis L. Theiss,
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: Louis L. Theiss, C.P.A.

Theiss & Theiss
42-02 Bell Boulevard
Bayside, New York 11361

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

1st day of October , 1974.

Martha Suarez

Janet Mack

AD 32 (6-73) 250M

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227

Copy 10/6/74

Louis L Theiss, C.P.A.
Theiss & Theiss
42-02 Belt Boulevard
Bayside, New York 11361



Name
Last Name
First Name
Address
City
State
Zip

☒ Moved, left no address
☐ No return
☒ Moved, new address
Address see unknown



STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS
ALBANY, N. Y. 12227



CS# 059-03-9921



CERTIFIED

No. 201940

MAIL

3

Mr. & Mrs. Everett J. Fahey

52-62 Douglaston Parkway

Douglaston, New York 11362

**NOT DELIVERABLE
AS ADDRESSED
ABLE TO FORWARD**

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EVERETT J. FAHEY and MARION E. FAHEY

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) 1964

State of New York
County of Albany

Janet Mack , 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 24th day of September , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Everett J. Fahey
and Marion E. Fahey (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Everett J. Fahey
52-62 Douglaston Parkway
Douglaston, New York 11362

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

24th day of September , 1974

Martha J. Jones

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EVERETT J. FAHEY and MARION E. FAHEY :

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 ~~(*)~~ 23 of the
Tax Law for the Year ~~(*)~~ 1964 :

State of New York
County of Albany

Janet Mack , being duly sworn, deposes and says that
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Notice of Decision (or Determination) by (certified) mail upon Louis L. Theiss,
C.P.A. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
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Theiss & Theiss
42-02 Bell Boulevard

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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

24th day of September , 1974

Martha Dumas

Janet Mack



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
~~ROBERT K. COX, PRESIDENT~~
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
September 24, 1974

Mr. & Mrs. Everett J. Fahey
52-62 Douglaston Parkway
Douglaston, New York 11362

Dear Mr. & Mrs. Fahey:

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,

Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
EVERETT J. FAHEY and MARION E. FAHEY : DECISION
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Year 1964. :

Petitioners, Everett J. Fahey and Marion E. Fahey, have filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1964. (File No. 4-28038459).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, on May 22, 1974, at 2:30 P.M. Petitioner, Everett J. Fahey, appeared with his accountant, Louis L. Theiss, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

ISSUE

Did the activities of petitioner, Everett J. Fahey, as a freight solicitor during 1964, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Everett J. Fahey and Marion E. Fahey, filed a New York State income tax resident return for the year 1964. They did not file an unincorporated business tax return for said year.

2. On January 29, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Everett J. Fahey, imposing unincorporated business tax upon the income received by him from his activities as a freight solicitor during the year 1964. In accordance

with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$514.47.

3. During the year 1964, petitioner, Everett J. Fahey, was a freight solicitor. He represented three companies; Be-Mac Transport Co., Tose Incorporated and the Port of Gulfport. His activities consisted of looking for new business, as well as calling on old customers in order to retain their business.

4. During the year 1964, petitioner, Everett J. Fahey, was on a commission basis with Tose Inc. and a salary basis with Be-Mac and the Port of Gulfport. No taxes were withheld from the compensation received by petitioner, and there was no coverage for workmen's compensation. Petitioner's compensation was negotiated to include projected expenses and he did not receive specific reimbursement for expenses. However, expenses were always paid by petitioner's superiors when they accompanied him on calls upon customers and prospects.

5. During the year 1964, petitioner, Everett J. Fahey, did receive guidance material and leads from the three companies that he represented and needed their approval on the contacts that he made. In addition, petitioner's supervisors visited his area of operation several times a year and accompanied him on some of his calls. However, these companies did not exercise any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Everett J. Fahey, from the companies he represented during the year 1964, constituted income from his regular business of freight soliciting and not income 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, Everett J. Fahey, during the year 1964, 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 Everett J. Fahey and Marion E. Fahey is denied and the Notice of Deficiency issued January 29, 1968, is sustained.

DATED: Albany, New York
September 24, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER