

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRA GOLDFLAM

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 and:
1967.

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 4th day of November , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Ira Goldflam

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Ira Goldflam

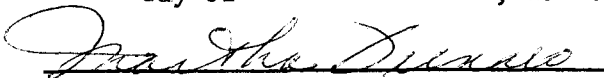
35 Seacoast Terrace
Brooklyn, New York 11235

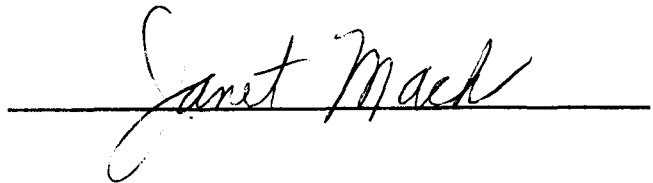
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (~~representative of~~
~~of~~) petitioner herein and that the address set forth on said wrapper is the last
known address of the (~~representative of~~) petitioner.

Sworn to before me this

4th day of November , 1974.





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STATE TAX COMMISSION

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AFFIDAVIT OF MAILING
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State of New York
County of Albany

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age, and that on the 4th day of November , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Abraham M. Kristol

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

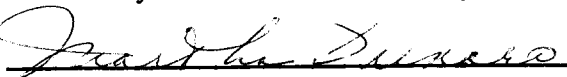
Abraham M. Kristol
2930 West 5th Street
Brooklyn, New York 11224

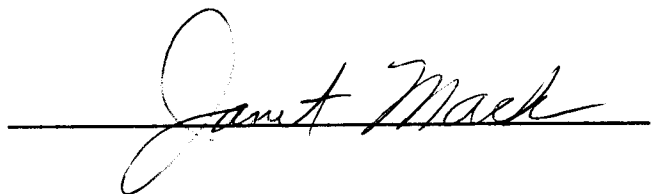
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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 November , 1974.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATEED: Albany, New York
November 4, 1974

Mr. Ira Goldflam
35 Seacoast Terrace
Brooklyn, New York 11235

Dear Mr. Goldflam:

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

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
IRA GOLDFLAM	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

Petitioner, Ira Goldflam, 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 1965, 1966 and 1967. (File No. 74309438). 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 January 17, 1974, at 9:37 A.M. Petitioner appeared by Abraham M. Kristol, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of Counsel).

ISSUES

I. Did petitioner, Ira Goldflam's activities as a silver plated item salesman during the years 1965, 1966 and 1967 constitute the carrying on of an unincorporated business?

II. If petitioner, Ira Goldflam, was carrying on an unincorporated business during the years 1965, 1966 and 1967, what portion of the income derived therefrom should be allocated to New York State?

FINDINGS OF FACT

1. Petitioner, Ira Goldflam, and his wife filed New York State income tax resident returns for the years 1965, 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On February 22, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Ira Goldflam, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1965, 1966 and 1967. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,014.32.

3. Petitioner, Ira Goldflam, was a silver plated item salesman during the years 1965, 1966 and 1967. He represented Sheridan Silver Co. Inc., and its affiliate, Wilson Specialties, Inc. in the sale of said merchandise. He did not represent any other principals although he was free to do so. He did not have any employees. He did not maintain an office or any other regular place of business within or without of New York State. His customers were located in metropolitan New York and New Jersey.

4. During the years 1965, 1966 and 1967, the firms for whom petitioner, Ira Goldflam, sold silver plated items did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. They did not cover him for workmen's compensation or unemployment insurance. They did not reimburse him for any of his business expenses. He deducted expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax returns. He reported his commission income as "business income" on his New York State resident income tax returns. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his sales activities or 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, Ira Goldflam, from the firms he represented during the years 1965, 1966 and 1967, constituted income from his regular business of selling silver plated items 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, Ira Goldflam, during the years 1965, 1966 and 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 since petitioner, Ira Goldflam, did not maintain a regular place of business outside of New York State during the years 1965, 1966 and 1967, all of his business income, including the income derived from out-of-state sales, must be allocated to New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.


D. That the petition of Ira Goldflam is denied and the Notice of Deficiency issued February 22, 1971, is sustained.

DATED: Albany, New York
November 4, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER