

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CLIFFORD L. MILLER, 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) 1968 and 1969.

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 15th day of May , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Clifford L.
Miller, 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. Clifford L. Miller, Jr.

R.D. #1

Claverack, New York 12513

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

15th day of May

, 1974.

James A. Hamilton
Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CLIFFORD L. MILLER, 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) 1968 and 1969.:

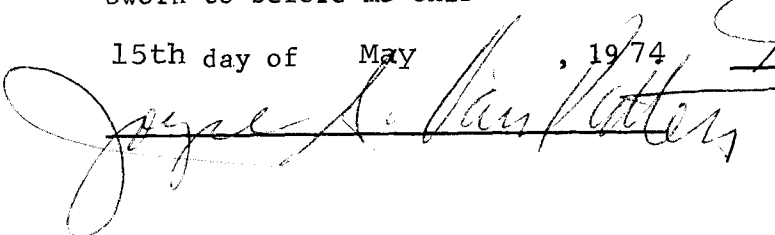

State of New York
County of Albany

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 15th day of May , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Carmi Rapport,
Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Carmi Rapport, Esq.
Rapport, Kennedy & Rapport
434 Union Street
Hudson, New York 12534
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

15th day of May , 1974



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
~~XXXXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 15, 1974

Mr. Clifford L. Miller, Jr.
R.D. # 1
Claverack, New York 12513

Dear Mr. Miller:

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,

L. Robert Leisner
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CLIFFORD L. MILLER, JR. :
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1968 and 1969. :
:

DECISION

A formal hearing was held at the offices of the State Tax Commission, Albany, New York, on July 11, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Carmi Rapport, Esq., and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

Were the taxpayer's activities during the years in issue subject to unincorporated business taxes?

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1968 and 1969 was issued on February 22, 1971, against the taxpayer under File No. 9-46586247.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. During the years in issue the taxpayer was a salesman of lime products for the Lee Lime Corporation, the Kelsey-Ferguson Brick Company, Shaffer-Grimm Building Supply, Milhall Brick Works and the Process Solvent Company.

5. He received commissions on sales and was paid the following month.

6. There was no written contract between the various corporations and the taxpayer.

7. There were no written reports. There was no division of time as to which companies' products he sold.

8. The taxpayer, while asserting workmen's compensation, presented only evidence of some Blue Cross or health insurance. The taxpayer had no paid vacation. There were no set hours of work. He never worked at the offices of the various corporations.

9. The taxpayer handled lime and building product sales from Westchester County to the Canadian border.

10. There was no substantial evidence that any of the companies, whose products the taxpayer sold, exerted any degree of control over him so that he would be deemed an employee.

CONCLUSIONS OF LAW

A. The taxpayer was an independent sales agent and his activities during the years in issue were subject to unincorporated business tax. (Price v. STC, 338 NYS 2d 337.)

B. The taxpayer's petition is denied. The deficiencies


in tax are sustained.

C. Pursuant to the Tax Law interest shall be added to the total amount due until paid.

DATED: Albany, New York
May 15, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER