

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP MUSOF and BEATRICE MUSOF :
For a Redetermination of a Deficiency or
a Refund of Unincorporated Business
Taxes under Article (x) 23 of the
Tax Law for the Year(s) 1966 and 1967 :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

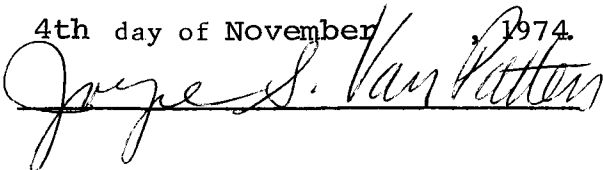
State of New York
County of Albany

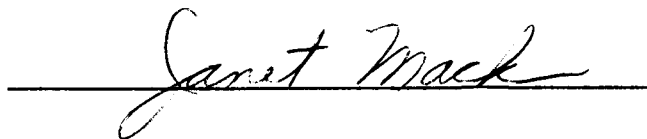
Janet Mack , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of November , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Philip Musof
and Beatrice Musof (~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Philip Musof
1825 South Ocean Drive
Apartment 204
Hallendale, Florida 33009
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

DATED: Albany, New York
November 4, 1974

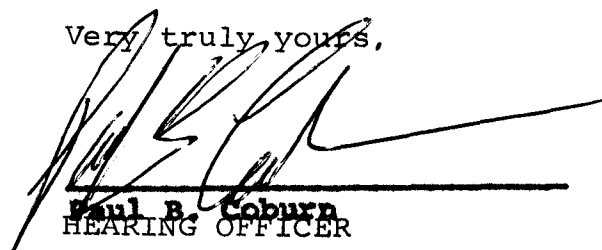
Mr. & Mrs. Philip Musof
1825 South Ocean Drive
Apartment 204
Hallendale, Florida 33009

Dear Mr. & Mrs. Musof:
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	:	
PHILIP MUSOF and BEATRICE MUSOF	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1966 and 1967.	:	

Petitioners, Philip Musof and Beatrice Musof, 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. 78718435). On August 7, 1973, petitioners advised the State Tax Commission, in writing, that they waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did petitioner, Philip Musof's selling activities during the years 1966 and 1967 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Philip Musof and Beatrice Musof, filed New York State income tax resident returns for the years 1966 and 1967. They did not file New York State unincorporated business tax returns for said years.

2. On October 26, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Philip Musof and Beatrice Musof, imposing unincorporated business tax for the years 1966 and 1967. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$697.35.

3. Petitioner, Philip Musof, was a traveling salesman. He sold goods of Green Duck, Inc., and its related company, St. Louis Button Co. He also sold goods for Joseph Boxer, and Jacobson Hat.

4. Petitioner, Philip Musof, had a written employment contract with Green Duck, Inc., as a sales manager during the years 1966 and 1967. He was to devote not less than 80% of his entire time to the business activity of Green Duck, Inc., and he was not to engage in any other business activity save selling noncompeting products. He received a base salary of \$7,500.00, which was subject to withholding taxes. He also received commissions of 2% of all net sales. These commissions amounted to \$200.00 in 1967. The original term of the contract was for six months, and continued subject to termination by either party upon not less than 90 days notice. He was furnished with office facilities and part-time stenographic help. For two years after termination of the agreement, he was not to compete with or solicit customers of Green Duck, Inc.

5. Petitioner, Philip Musof, deducted unreimbursed employee business expenses, including auto and away from home travel expenses, on his 1967 Federal income tax return. He did not complete a Schedule "C" on said return. The firms, other than Green Duck, Inc., did not exercise any substantial direction and control over his sales activities or techniques or over the time he devoted to sales.

CONCLUSIONS OF LAW

A. That the salary received by petitioner, Philip Musof, from Green Duck, Inc., was paid pursuant to a written employment contract and was within an employee-employer relationship, and therefore, the aforesaid salary was not subject to unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the income received by petitioner, Philip Musof, from the other firms he represented during the years 1966 and 1967, and including commissions from Green Duck, Inc., constituted income from his regular business of selling 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.

C. That the aforesaid activities of petitioner, Philip Musof, 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. However, he did not have sufficient income from his unincorporated business so as to be subject to any unincorporated business tax.

D. That the petition of Philip Musof and Beatrice Musof is granted and the Notice of Deficiency issued on October 26, 1970, is cancelled.

DATED: Albany, New York
November 4, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

AD 32 (6-73) 250M

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

Aug



Mr. & Mrs. Philip Musof
1825 South Ocean Drive
Apartment 204
Hallendale, Florida 33009

SS# 40-12-9366



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

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

DATED: Albany, New York
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Mr. & Mrs. Philip Musof
1825 South Ocean Drive
Apartment 204
Hallendale, Florida 33009

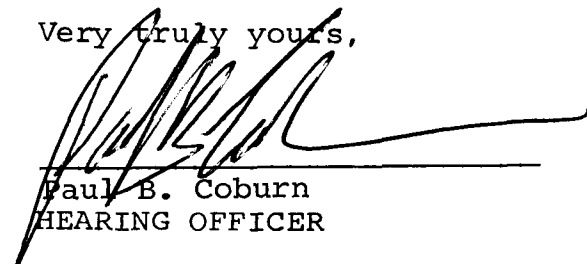
Dear Mr. & Mrs. Musof:

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 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	:	
PHILIP MUSOF and BEATRICE MUSOF	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1966 and 1967.	:	

Petitioners, Philip Musof and Beatrice Musof, 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. 78718435). On August 7, 1973, petitioners advised the State Tax Commission, in writing, that they waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did petitioner, Philip Musof's selling activities during the years 1966 and 1967 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Philip Musof and Beatrice Musof, filed New York State income tax resident returns for the years 1966 and 1967. They did not file New York State unincorporated business tax returns for said years.

In the Matter of the Petition

of

PHILIP MUSOFF and BEATRICE MUSOFF

DECISION

for Re determination of deficiency or
for Refund of Unincorporated Business
Tax under Article 22 of the Tax Law
for the years 1956 and 1957.

Petitioners, Philip Musoff and Beatrice Musoff, have filed a

petition for redetermination of deficiency or for refund of unincor-

porated business tax under Article 22 of the Tax Law for the

years 1956 and 1957. (File No. 1514423). On August 1, 1957,

petitioners advised the State Tax Commission, in writing, that they

wanted a formal hearing and submitted the case to the State Tax

Commission upon the entire record contained in the file. The State

Tax Commission rendered the following decision after due consideration

of said record.

FINDINGS OF FACT

The petitioners, Philip Musoff and Beatrice Musoff, during the

years 1956 and 1957 conducted the carrying on of an unincorporated

business.

CONCLUSIONS OF LAW

1. Petitioners, Philip Musoff and Beatrice Musoff, filed New

York State income tax returns for the years 1956 and 1957.

They did not file New York State unincorporated business tax returns

for said years.

2. On October 26, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Philip Musof and Beatrice Musof, imposing unincorporated business tax for the years 1966 and 1967. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$697.35.

3. Petitioner, Philip Musof, was a traveling salesman. He sold goods of Green Duck, Inc., and its related company, St. Louis Button Co. He also sold goods for Joseph Boxer and Jacobson Hat.

4. Petitioner, Philip Musof, had a written employment contract with Green Duck, Inc., as a sales manager during the years 1966 and 1967. He was to devote not less than 80% of his entire time to the business activity of Green Duck, Inc., and he was not to engage in any other business activity save selling noncompeting products. He received a base salary of \$7,500.00, which was subject to withholding taxes. He also received commissions of 2% of all net sales. These commissions amounted to \$200.00 in 1967. The original term of the contract was for six months, and continued subject to termination by either party upon not less than 90 days notice. He was furnished with office facilities and part-time stenographic help. For two years after termination of the agreement, he was not to compete with or solicit customers of Green Duck, Inc.

5. Petitioner, Philip Musof, deducted unreimbursed employee business expenses, including auto and away from home travel expenses, on his 1967 Federal income tax return. He did not complete a Schedule "C" on said return. The firms, other than Green Duck, Inc., did not exercise any substantial direction and control over his sales activities or techniques or over the time he devoted to sales.

2. On October 30, 1960, the Income Tax Bureau issued a statement of Audit Changes against petitioner, Philip Muesel, and his business, Muesel, Inc., imposing unincorporated business tax for the years 1955 and 1957. In accordance with the statement of Audit Changes, it issued a notice of deficiency in the amount of \$257.35.

3. Petitioner, Philip Muesel, was a traveling salesman. He sold goods of Green Duck, Inc., and its related company, St. Louis, Burton Co. He also sold goods for Joseph Fox and Jacobson Inc.

4. Petitioner, Philip Muesel, had a written employment contract with Green Duck, Inc., as a sales manager during the years 1956 and 1957. He was to devote not less than 60% of his entire time to the business activity of Green Duck, Inc., and he was not to engage in any other business activity save selling noncompeting products. He received a base salary of \$7,500.00, which was subject to withholding

taxes. He also received commissions of 2% of all net sales. These commissions amounted to \$200.00 in 1957. The original term of the contract was for six months, and continued subject to termination

by either party upon not less than 30 days notice. He was furnished with office facilities and part-time stenographic help. For two years after termination of the agreement, he was not to compete with or solicit customers of Green Duck, Inc.

5. Petitioner, Philip Muesel, deducted unreimbursed employee business expenses, including auto and away from home travel expenses, on his 1957 Federal income tax return. He did not complete a schedule "C" on said return. The time, other than Green Duck, Inc., did not

exercise any substantial direction and control over his sales activities or expenditures during the time he devoted to sales.

CONCLUSIONS OF LAW

A. That the salary received by petitioner, Philip Musof, from Green Duck, Inc., was paid pursuant to a written employment contract and was within an employee-employer relationship, and therefore, the aforesaid salary was not subject to unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the income received by petitioner, Philip Musof, from the other firms he represented during the years 1966 and 1967, and including commissions from Green Duck, Inc., constituted income from his regular business of selling 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.


C. That the aforesaid activities of petitioner, Philip Musof, 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. However, he did not have sufficient income from his unincorporated business so as to be subject to any unincorporated business tax.

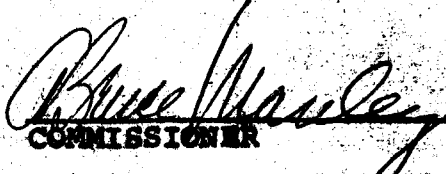
D. That the petition of Philip Musof and Beatrice Musof is granted and the Notice of Deficiency issued on October 26, 1970, is cancelled.

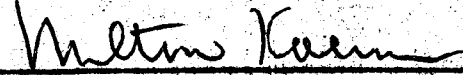
DATED: Albany, New York

November 4, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

- 3 -

CONCLUSIONS OF LAW

A. That the activity of petitioner, Philip M. Green, Inc., was not intended to a written employment contract and was within an employer-employee relationship, and therefore the activity was not subject to unemployment business tax in accordance with the meaning and intent of section 703(b) of the

Tax Law.

B. That the income received by petitioner, Philip M. Green, Inc., from the other firms he represented during the years 1955 and 1957, and including commissions from Green Bank, Inc., constituted income from his regular business of selling and not compensation as an employee except from the taxation of the unemployment business tax in accordance with the meaning and intent of section 703(b) of the

Tax Law.

C. That the activity of petitioner, Philip M. Green, Inc., during the years 1955 and 1957, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unemployment business tax in accordance with the meaning and intent of section 703 of the Tax Law. However, he did not have

sufficient income from his unincorporated business so as to be

subject to any unincorporated business tax

D. That the petition of Philip M. Green and Rebecca M. Green is granted and the notice of Deficiency issued on October 22, 1957, is cancelled.

STATE TAX COMMISSION

DATED: Albany, New York

November 4, 1957

COMMISSIONER

COMMISSIONER