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(s) 23 of the
Tax Law for the Year(s)1966 and 1967:

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

Janet Mack

State of New York County of Albany

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

and by depositing same enclosed Hallendale id Floring 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.

Sworn to before me this

4th day of November

Van Pattin

AD-1.30 (1/74)



STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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
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 decision must be commenced within from the date of this notice. 4 months

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.

Enc.

c: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

DECISION PHILIP MUSOF and BEATRICE MUSOF

for Redetermination of Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law

for the Years 1966 and 1967.

of said record.

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

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

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

Department of Taxation and Finance AD 32 (6-73) 250M STATE OF NEW YORK STATE CAMPUS

ALBANY, N. Y. 12227

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

SS# 12-12-131



STATE OF NEW YORK DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

EDWARD ROOK SECRETARY TO COMMISSION

ADDRESS YOUR REPLY TO

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

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

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(%) 722 of the Tax Law, any proceeding in court to review an adverse decision 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.

y your

Enc.

Haul B. Coburn HEARING OFFICER

cc:

Petitioner's Representative

Law Bureau

STATE OF NEW YORK

ETATE 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 Main-corporated 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 refuses for said years.

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PHILIP MUSOF and BLANKICH MURGE : DECISION

for Redetarnination of Deficiency or for Retund of Unincorparered Dusthess Tax Under Article 23 of the Tax law for the Years 1965 and 1877.

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- 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. Patitioner, 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 stemographic 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.

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- 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 tag 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 hot 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 patitioner, 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

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COMMISSIONER

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- A. Therethe stary required by petitions. Failing Profit from Green with, Inc., was paid purent to a written employment contract of salitten employment contract and was within an eaple ex-employer reinforchin, and therefore the afforestia talent, was not subject to unincorporated but ness in accordance with the meaning and intert of section 103(b) of the Tax Lew.
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- O. They the alonesid activities of petitioner, this is that if, and during the years if it is indicated in a carrying as of an unincorporated business and his independent therefore was subject to unincorporated business tax in acrordance sich the menuing an intent of section 700 of the the the the new ing an authority of section 700 of the the the carrying and authority of section the unincorporated business of as to be subject to any unincorporated business on as to be subject to any unincorporated business business of as to be subject to any unincorporated business business of as to be
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November 4, 1974

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