

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUSSELL A. PHILLIPS

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) 1966, 1967, :
1968 & 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 25th day of October, 1974, she served the within
Notice of Decision ~~(on Redetermination)~~ by (certified) mail upon Russell A. Phillips

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Russell A. Phillips
2 Clinton Park
Batavia, New York 14020

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 the) petitioner.

Sworn to before me this

25th day of October, 1974

Janet Mack

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RUSSELL A. PHILLIPS

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) 1966, 1967, :
1968 & 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 25th day of October , 1974, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Peter L. Faber, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Peter L. Faber, Esq.
Wiser Shaw Freeman Van Graafeiland
Harter & Secrest
700 Midtown Tower
Rochester, New York 14604
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

25th day of October , 1974

Janet Mack

Martha Funaro



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

October 25, 1974

Mr. Russell A. Phillips
2 Clinton Park
Batavia, New York 14020

Dear Mr. Phillips

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,

L. Robert Leisner

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	:	
RUSSELL A. PHILLIPS	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1966, 1967, 1968 and 1969.	:	

Petitioner, Russell A. Phillips, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1966, 1967, 1968 and 1969.

A formal hearing was held at the offices of the State Tax Commission, 1 Marine Midland Plaza, Rochester, New York, on Thursday, September 20, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Wiser, Shaw, Freeman, Van Graafeiland, Harter, & Secrest, (Peter L. Faber, Esq., of counsel and William H. Helferich, III, Esq., co-counsel). The Income Tax Bureau was represented by Saul Heckelman, Esq. (Solomon Seis, Esq., of counsel).

ISSUE

Whether petitioner, Russel A. Phillips' activities as a sales representative for the R. L. English Company constituted the carrying on of an unincorporated business under section 703 of the Tax Law for the years 1966, 1967, 1968 and 1969.

FINDINGS OF FACT

1. Petitioner, Russell A. Phillips, timely filed New York State income tax returns for the years 1966, 1967, 1968 and 1969. He did not file New York State unincorporated business tax returns for said years.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1966, 1967, 1968 and 1969 was issued on July 26, 1971 against the taxpayer under File No. 9-34044598.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. During the years 1966 through 1969, petitioner, Russell A. Phillips, was a salesman for the R. L. English Company. The company itself is a sales representative for various manufacturing firms. The R. L. English Company directed him as to which customers to call upon, what sales procedures to follow and methods of representing products. It set sales quotas in such a way as to insure full time loyalty. The company controlled the merchandise lines represented by the petitioner. He was also required to attend sales meetings and to send in detailed written weekly reports. During said years, the petitioner, Russell A. Phillips, worked only for the R. L. English Company and for no one else.

5. During the years 1966 through 1969, petitioner, Russell A. Phillips, was required to enter into a stock purchase agreement whereby, upon the death of Mr. English, he and two other salesmen, were required to purchase his stock from his widow. The R. L. English Company purchased an ordinary life insurance policy on the life of petitioner under which the company was to be named beneficiary. It also purchased a group term life insurance policy on petitioner's life with his wife as named beneficiary. The company did not withhold income taxes, social security, disability or unemployment insurance. He worked under a draw agreement whereby he would be given a sum of \$800.00 against his commissions each and every month whether his commissions totaled \$800.00 or not. He had no commercial

office but did do his paperwork at a desk in the basement of his home. He was not reimbursed for expenses incurred in the pursuit of his business.

CONCLUSIONS OF LAW

A. That petitioner, Russell A. Phillips' activities as a sales representative for the R. L. English Company did not constitute the carrying on of an unincorporated business under section 703 of the Tax Law during the years 1966, 1967, 1968 and 1969.

B. That petitioner, Russell A. Phillips, was an employee of the R. L. English Company during the years 1966, 1967, 1968 and 1969. Matter of Electrolux Corporation, 288 N.Y. 440 (1941), Matter of Morton, 284 N.Y. 167 (1940).

C. That the taxpayer's petition is sustained. It is determined that there are no deficiencies against petitioner, either income tax or unincorporated business tax for the years 1966, 1967, 1968 and 1969.

DATED: Albany, New York
October 25, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER