

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HERMAN P. WEAVER

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) 1967 and 1968.:

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

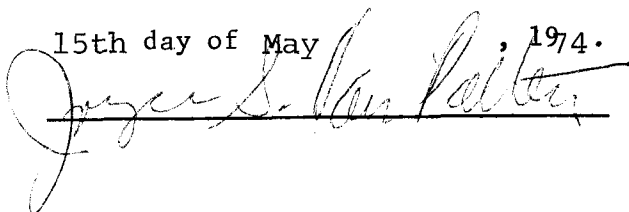
State of New York
County of Albany

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 Herman P. Weaver
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Herman P. Weaver
403 A Pine Ridge Drive
Whispering Pines, North Carolina
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
STATE TAX COMMISSION

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HERMAN P. WEAVER

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Tax Law for the Year(s) 1967 and 1968 :

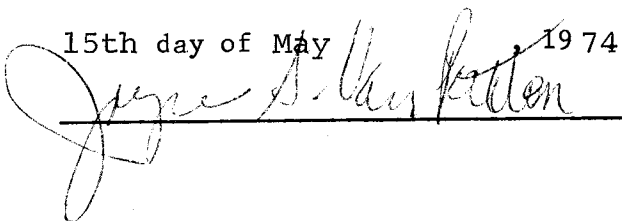
State of New York
County of Albany

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 A. William
DeFilippo, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: A. William DeFilippo, Esq.
DeFilippo Brothers
408 East Church Street
Elmira, New York, 14901
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


J. A. Van Katten


Martha Funaro



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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
Mario A. Procaccino
~~XXXXXXXXXX~~, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 15, 1974

Mr. Herman P. Weaver
403 A Pine Ridge Drive
Whispering Pines, North Carolina

Dear Mr. Weaver:

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 OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
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HERMAN P. WEAVER	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Unincorporated Busi-	:	
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Tax Law for the Years 1967 and 1968.	:	

Petitioner, Herman P. Weaver, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1967 and 1968.

A formal hearing was held at the offices of the State Tax Commission, Binghamton, New York, on July 25, 1973, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by De Filippo Brothers, A. William De Filippo, Esq., of Counsel, and the Income Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of Counsel).

ISSUE

Were the activities of the petitioner, in 1967 and 1968, a manufacturer's representative, subject to unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, Herman P. Weaver, timely filed New York State income tax returns for the years 1967 and 1968 but did not file unincorporated business tax returns for those years.
2. A Notice of Determination of deficiencies in unincorporated business taxes and penalties for the years 1967 and 1968 was issued on February 22, 1971, against the taxpayer under File No. 8-18705801.
3. The taxpayer petitioned for redetermination of the deficiencies. The following facts set forth in paragraphs 4 through 12 are found exactly as stipulated by the parties at the hearing:

4. Herman P. Weaver was a manufacturer's representative for about six or seven principals. He travels to organizations and displays the merchandise of said principals and takes orders which are sent to the principals for filling.

5. He receives commissions from these principals based on orders placed. He covers the states of New York, Pennsylvania, New Jersey, Delaware, West Virginia, Maryland, and the District of Columbia (Washington, D.C.).

6. He has no office within or without the State of New York.

7. No Federal or State income taxes or social security taxes are withheld from his commissions.

8. He deducts expenses incurred in traveling on his tax return on Federal Schedule "C". He was furnished with Federal forms 1099 by each of the principals showing commissions paid.

9. He pays self-employment tax.

10. With respect to supervisors he was not interfered with by the principals unless his territory was not covered regularly and properly to their satisfaction or to the satisfaction of the customers. The foregoing facts involve the years 1967 and 1968 during which time the taxpayer was a resident and domiciliary of the State of New York as shown by the address on his tax returns.

11. He had his own letterhead listing himself as a "manufacturer's representative" with an address at 677 Wall Street, Elmira, New York, 14905, with the telephone number RE 4-7272.

12. When taxpayer was operating in a foreign state, he would obtain a motel room and stay there for the duration of the period and any orders he received while in this foreign state he would write up and send direct to the manufacturer.

On the entire record we also find as a fact:

13. The taxpayer honestly did not believe he was required to file unincorporated business tax returns for the years in question.

CONCLUSIONS OF LAW

A. The taxpayer acted in good faith in not filing the unincorporated business tax returns. The penalties are cancelled.

B. The petitioner was an independent sales agent and his activities were subject to unincorporated business tax. Feld v. Gallman, 41 A D 2d 882; Price v. State Tax Commission, 40 A D 2d 930.

C. The determination of the deficiencies is sustained except as modified by the cancellation of penalties.


D. 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