

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RINALDO A. ERCOLINO

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 ~~13~~ 23 of the
Tax Law for the Year ~~1966~~ 1967. :

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 3rd day of December , 1975, she served the within
Notice of Decision ~~XXXXXXXXXXXX~~ by (certified) mail upon

RINALDO A. ERCOLINO ~~XXXXXXXXXXXX~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Rinaldo A. Ercolino
2347 84th Street
Brooklyn, New York 11214

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 ~~XXXXXXXXXX~~
~~XXX~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~XXXXXXXXXXXX~~ petitioner.

Sworn to before me this

3rd day of December , 1975

Mary Groff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
RINALDO A. ERCOLINO

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 (X) 23 of the :
Tax Law for the Year (X) 1967. :

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 3rd day of December, 1975, she served the within
Notice of Decision ~~XXXXXX~~ by (certified) mail upon FRANKLYN S.
WEINBERG, C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Franklyn S. Weinberg, C.P.A.
715 Mattison Avenue
Asbury Park, New Jersey 07713

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

3rd day of December, 1975

Mary Hoff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER

(518) 457-3850

DATED: Albany, New York
December 3, 1975

Mr. Rinaldo A. Ercoline
2347 84th Street
Brooklyn, New York 11214

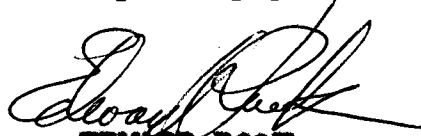
Dear Mr. Ercoline:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section (**X**) **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,


EDWARD ROOK
XXXXXXXXXXXX

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	:	
RINALDO A. ERCOLINO	:	
for a Redetermination of a Deficiency	:	DECISION
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1967.	:	

Rinaldo A. Ercolino, 2347 84th Street, Brooklyn, New York 11214, filed a petition for the redetermination of a deficiency issued under date of February 22, 1971, for unincorporated business tax in the amount of \$338.08 plus interest of \$57.86 and a penalty for failure to file a return of \$84.52 for a total of \$480.46 for the year 1967.

A hearing was duly held on September 12, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Franklyn S. Weinberg, C.P.A. of Asbury Park, New Jersey. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq., of counsel. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner, an outside salesman, is subject to the tax on unincorporated business.

FINDINGS OF FACT

1. Petitioner is an outside salesman. He represents distributors selling to pet shops in the greater New York area including all of New Jersey and Long Island.

2. Petitioner received compensation of \$14,116.00 from one source, Walter B. Stevens & Sons, Inc. of 155 West Broadway, New York City. They are distributors of dog and cat furnishings, including collars, brushes, trays, etc. The compensation was based on straight commissions from which Walter B. Stevens & Sons, Inc. withheld taxes and social security. The company paid workmen's compensation and unemployment insurance for petitioner. Petitioner had been with Walter B. Stevens & Sons, Inc. since 1935. He spent most of his time on the road and was in the offices of the company for only a few hours once a week. Petitioner either mailed or phoned his orders in. Walter B. Stevens & Sons, Inc. knew that petitioner worked for other companies.

3. Petitioner received compensation of \$8,650.00 from five other companies distributing products to pet shops. Petitioner was not subject to the direction and control of these companies. At least 23% of the dollar volume of these sales were to customers who also purchased from Walter B. Stevens & Sons, Inc. Only about 30% of the firms petitioner called on do not handle the products of Walter B. Stevens & Sons, Inc. He was paid on a straight commission basis.

4. Petitioner furnished all his own equipment and his expenses were not reimbursed by Walter B. Stevens & Sons, Inc. or the other companies.

5. Petitioner has failed to file a return for 1967.

CONCLUSIONS OF LAW

The activities of petitioner are those of an independent sales agent with respect to Walter B. Stevens & Sons, Inc. and his other principals.

The petition is denied and the determination of the deficiency in unincorporated business tax as well as the penalty for failure to file an unincorporated business tax return is sustained. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
December 3, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER