

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MURRAY L. & JEAN T. ETH

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) 1965, 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 21st day of May , 19 75, she served the within
Notice of Decision ~~(on Determination)~~ by (certified) mail upon MURRAY L. &

JEAN T. ETH

~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. and Mrs. Murray L. Eth

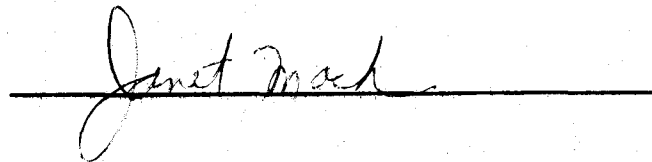
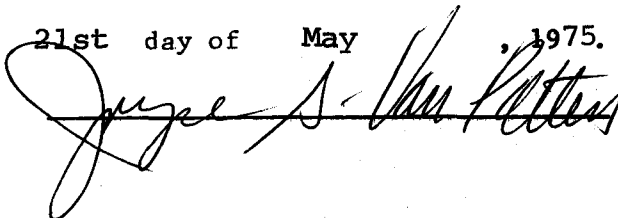
50 Ashwood Drive
Blauvelt, New York 10913

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

21st day of May , 1975.



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MURRAY L. & JEAN T. ETH

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
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Notice of Decision ~~(on Determination)~~ by (certified) mail upon IRVING GORDON, 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:

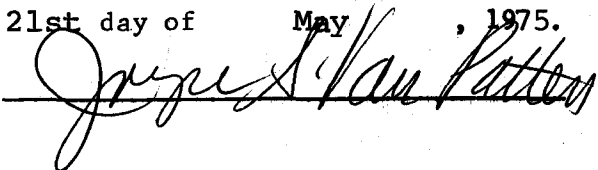
Irving Gordon, C.P.A.
331 Madison Avenue
New York, New York 10017

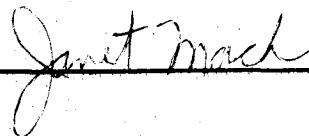
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

21st day of May, 1975.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

~~James H. Tully, Jr.~~ 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
May 21, 1975

Mr. and Mrs. Murray L. Eth
50 Ashwood Drive
Blauvelt, New York 10913

Dear Mr. and Mrs. Eth:

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

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

Nigel G. Wright
Nigel G. Wright

Enc.

HEARING OFFICER

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	:	
	:	
MURRAY L. & JEAN T. ETH	:	DECISION
	:	
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

Murray L. and Jean T. Eth, 50 Ashwood Drive, Blauvelt, New York 10913, filed a petition for the redetermination of a deficiency in unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 72514529.)

Said deficiency was asserted under a notice issued on May 25, 1970, and is in the amount of \$1,566.97 plus \$268.18 interest for a total of \$1,835.15.

A hearing was duly held on November 19, 1974, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Irving Gordon, C.P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Alexander Weiss, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether the salary received by one of the petitioners, Mr. Eth, an employed sales representative, is for services which constitute part of business regularly carried on by him when petitioner also receives commission income as an independent sales representative for other principals.

FINDINGS OF FACT

1. Mr. Eth, during the years in question, was employed by A.G.E. Yorkville Paper Company of Yonkers, New York, as a sales representative. He had been so employed since 1946. Yorkville withheld income taxes and social security taxes and covered Mr. Eth for unemployment insurance and workmen's compensation. He was paid on a commission basis. These amounted to about \$11,000.00 in 1965, \$20,000.00 in 1966 and \$23,000.00 in 1967.

2. Yorkville is a manufacturer of polyethylene bags used for garbage and for wrapping food. Mr. Eth covered only the New York metropolitan area. He did not have to travel overnight. He did, however, incur expenses and was not reimbursed for those expenses. Mr. Eth spent about 95% of his time working for Yorkville.

3. Mr. Eth was also a sales representative for seven other companies. He admits he was not an employee of these companies. They each were manufacturers of some type of paper or plastic product which was sold usually to restaurants or supermarkets, i.e. plastic wrapping, foam cups, cup lids, drinking straws,

toothpick frills and doilies. Mr. Eth developed these lines originally as sidelines to his employment for Yorkville. Mr. Eth's commissions from these firms amounted to about \$26,000.00 in 1965 \$19,000.00 in 1966 and \$18,000.00 in 1967. To carry these lines, Mr. Eth employed a young man to actively solicit business in the New York metropolitan area and New Jersey. Mr. Eth did personally solicit some customers for these lines but estimates that this took only about 5% of his time.

4. Mr. Eth's expenses both as an employee and as an independent salesman were taken, without segregation, as deductions on his Federal income tax return. However, the salary paid to Mr. Eth's employee and the withholding taxes attributable to such salary will be deemed to be expenses not related to Mr. Eth's own employment income. These amounts are \$6,005.00 for 1965; \$7,176.39 for 1966 and \$8,161.40 for 1967. In the absence of testimony to the contrary, it is found that Mr. Eth's own employee paid his own expenses with the result that all sales expenses declared by Mr. Eth other than the employee's salary and taxes are attributable to himself and his employment with Yorkville.

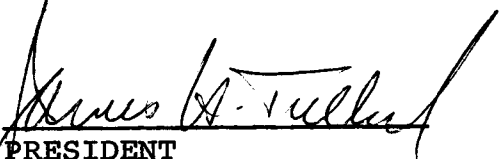
CONCLUSIONS OF LAW

The services which Mr. Eth performs for his employer are

sufficiently separate from his other services so as not to constitute part of his business income. Mrs. Jean T. Eth did not participate in the business and is not liable for the tax. The commission income of Mr. Eth as an independent salesman is subject to tax. Such tax is computed to be \$626.24 plus interest of \$141.49 to the date of the notice of deficiency for a total of \$767.33. Such amount is due together with such further interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
May 21, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER