

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

S. FRED GREENBERG

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(s) 1967 through :
1970.

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 18th day of December, 1975, she served the within
Notice of Decision ~~(XX) DEPARTMENT OF TAXATION~~ by (certified) mail upon

S. FRED GREENBERG ~~(XX) DEPARTMENT OF TAXATION~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. S. Fred Greenberg
404 West Cedar Street
Rome, New York

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 ~~(XX) DEPARTMENT OF TAXATION~~
~~(XX)~~ petitioner herein and that the address set forth on said wrapper is the last
known address of the ~~(XX) DEPARTMENT OF TAXATION~~ petitioner.

Sworn to before me this
18th day of December, 1975

Mary Groff

Janet Mack

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
S. FRED GREENBERG	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1967 through 1970.	:	

Petitioner, S. Fred Greenberg, of 404 West Cedar Street, Rome, New York, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1967 through 1970.

A calendar call was scheduled before Honorable A. Bruce Manley, at the offices of the State Tax Commission, at Utica, New York, on October 26, 1973.

Notice of said hearing was given to petitioner. No one appeared for the taxpayer. A default dated December 5, 1973, was duly recorded.

Petitioner notified the State Tax Commission on December 18, 1973, that he had received no notice of the scheduled October 26 hearing and requested that the default in said matter be opened. Petitioner's request was granted on January 25, 1974, and said matter was again scheduled for formal hearing.

A formal hearing was held at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on March 14, 1975, before L. Robert Leisner, Hearing Officer. The taxpayer represented himself and the Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq.

ISSUE

The issue in this case is whether income derived from activities as a marketing representative for various principals is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, S. Fred Greenberg, timely filed New York State Income Tax resident returns for the years 1967 through 1970 but did not file unincorporated business tax returns for those years.
2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1967 through 1970 was issued on May 22, 1972, against the taxpayer under File No. 0-56564382.
3. The taxpayer petitioned for redetermination of the deficiencies.
4. Petitioner had a business background with an undergraduate degree in business administration. He also had a technical background in radio and communications, acquired during service in armed forces schools.
5. Petitioner worked in a marketing representative capacity for a minimum of two companies each year during the years in question, representing as many as four companies during the taxable year 1969. He was compensated on a retainer basis, usually bi-weekly or monthly. While one of the represented companies, Chesapeake Systems Corporation provided petitioner with standard group hospital, accident and life insurance on the same basis that it was offered to Chesapeake's employees. None of the companies petitioner represented, withheld taxes or social security payments from his pay, nor did they offer any type of pension plan.

6. The petitioner's duties consisted of acting as a liaison between the various electronic companies he represented and the government advising and monitoring developments with regard to the technical radar and radio contracts involved.

7. Petitioner has separate business cards for each concern indicating that he represented the concern.

8. The petitioner's hours were not spelled out or set. Although in some instances it was expected that petitioner would devote a certain number of hours weekly to a particular concern. The concerns did not know the number of hours he spent working for other corporations, however, such other work arrangements were required not to cause conflicts of interest.

9. Petitioner was expected to periodically account for his time to the companies and make contact reports and weekly reports as well as monthly program status reports. The various companies supplied letterhead stationery and forms for such correspondence.

10. Petitioner was usually reimbursed for expenses incurred while traveling in his capacity as marketing representative for various companies.

11. Petitioner worked out of his home and had a room with his desk, filing cabinet, telephone and depreciable office furnishings. He received only minimum reimbursement on such office expense. Because he was sometimes required to store classified documents, one of the represented companies provided petitioner with a government approved safe.

12. Petitioner had filed a Schedule "C" with business expenses and a Schedule "C-2" explaining deductions for depreciation.

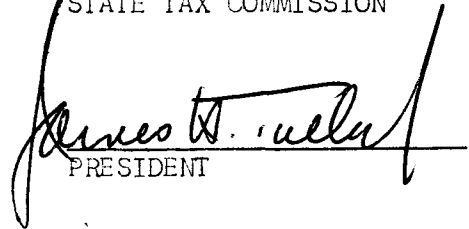
CONCLUSIONS OF LAW

A. The activities of petitioner, S. Fred Greenberg, as a marketing representative for several concerns, in 1967 through 1970 constituted the carrying on of an unincorporated business and were subject to unincorporated business tax.

B. The petition is denied and the determination of the deficiency in unincorporated business tax plus interest is sustained.

DATED: Albany, New York
December 18, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER