

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RAYMOND KASENDORF

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) 1963, 1964 and
1965.

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 17th day of March, 1975, she served the within
Notice of Decision (~~xxx Determination~~) by (certified) mail upon RAYMOND KASENDORF

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Mr. Raymond Kasendorf
3 Clinton Lane
Jericho, New York 11753

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)~~
~~xxx~~ 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

17th day of March, 1975.

Katherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

RAYMOND KASENDORF

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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 17th day of March, 1975, she served the within
Notice of Decision ~~for Raymond Kasendorf~~ by (certified) mail upon EMANUEL ESCOE, 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: Emanuel Escoe, P.A.
c/o Escoe and Heinberg
217 Broadway
New York, 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 (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

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Katherine D. Manly

Janet Mack



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
March 17, 1975

Mr. Raymond Kasendorf
3 Clinton Lane
Jericho, New York 11753

Dear Mr. Kasendorf:

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
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RAYMOND KASENDORF	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1963, 1964 and 1965.	:	
	:	

Raymond Kasendorf filed a petition for the redetermination of a deficiency issued on March 11, 1968 in the amount of \$2,920.81 plus interest of \$462.16 and a penalty for failure to file returns of \$707.39 for a total of \$4,090.36 for unincorporated business tax under Article 23 of the Tax Law for the years 1963, 1964 and 1965.

A hearing was duly held on October 17, 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 Emanuel Escoe, P.A. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Solomon Sies, Esq. The record of said hearing has been duly examined and considered.

ISSUES

The issues in this case are whether the petitioner, an outside salesman, is an independent contractor and as such is so engaged in an unincorporated business, whether he is so engaged in business outside the State so as to entitle him to allocate some income to non-New York sources and whether a penalty for failure to file returns should be waived. Part of the deficiency in issue is due to Federal audit changes and is conceded by petitioner.

FINDINGS OF FACT

1. The petitioner, Raymond Kasendorf, was a resident of Jericho, Long Island, during the years in question. Raymond Kasendorf is a manufacturer's representative of men's sportswear. He sells to only one class of customers -- approximately fifty military post exchanges in the Atlantic seaboard states. Each manufacturer had given him exclusive soliciting rights to the post exchanges. He was compensated on a commission basis.

2. From thirty to forty percent of petitioner's commissions came from sales for McGregor-Doniger, Inc. He had started with McGregor in about 1945. At that time, McGregor withheld taxes and social security from his commissions. A little later he started representing other companies with their permission to supplement his income. Around 1955, McGregor changed their policy with respect to salesmen and ceased withholding. He had a written contract with McGregor. McGregor had to approve any other lines which petitioner chose to carry.

3. About fifty percent of petitioner's commissions came from the Stedman Manufacturing Company of Asheboro, North Carolina. They are manufacturers of underwear. At no time did they withhold taxes or social security. He had a written contract with Stedman.

4. A very small amount of petitioner's commissions came from about four to six other companies. He had no written contracts with these companies.

5. The McGregor contract provided that petitioner "shall be subject to the direction and supervision of the Home Office of the Company". However, this was applied by the company merely

to mandate the types of order blanks and report forms which had to be filed. The Stedman contract had provisions prohibiting "kick backs."

6. Petitioner kept his voluminous samples in the basement and other areas of his house in Jericho, New York. He also kept his personal sales records there. He did not, however, meet customers there. Outside of New York, he had no base of operations. He merely solicited on the premises of his customers. His assets to the premises of the manufacturers he represented were sporadic and not, in any event, for purposes of customer contact.

7. Petitioner generally paid his own expenses, which averaged about one-third of his commissions received. Occasionally, a manufacturer would pay his expenses when he went to a sales meeting at the company's home office.

8. The proportion of the dollar volume of sales made by petitioner, which were made outside of New York State, was as estimated from petitioner's records averaged 92% for McGregor products and 88% for Stedman products.

CONCLUSIONS OF LAW

Petitioner is an independent contractor. He has not shown that he has an office outside of the State so as to be entitled to allocate his income.

The deficiency is found correct in its entirety and is due together with such interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York
March 17, 1975

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
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Nigel G. Wright
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227



☐ Moved to address

☐ Moved to address

☐ Moved to address

☐ Addressed unknown

☐ Addressed unknown

No. 202160

MAIL

Dr. Beck

Emanuel Escoc, P.A.
c/o Escoc and Heinberg
217 Broadway
New York, New York

Escoc



STATE TAX COMMISSION

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