

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HANS H. MASIE and DOROTHY G. MASIE

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)~~ 1970.

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 9th day of October, 1975, she served the within
Notice of Decision ~~(xx Determination)~~ by ~~(certified)~~ mail upon HANS H. MASIE and
DOROTHY G. MASIE ~~(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. Hans H. Masie
c/o La Manganera
Calpe, Spain
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)~~
~~xx~~ 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

9th day of October, 1975.

Mary Hoff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

JAMES H. TULLY, JR., PRESIDENT
MILTON KOERNER

~~GEORGE X O'CONNELL~~

BUILDING 9, ROOM ~~2107~~ ¹⁰⁷
STATE CAMPUS
ALBANY, N.Y. 12227
AREA CODE 518

DATED: Albany, New York
October 9, 1975

ADDRESS YOUR REPLY TO
Mr. Wright
Mr. Coburn
Mr. Leisner
(518) 457-3336

Mr. and Mrs. Hans H. Masie
c/o La Mansanera
Calpe, Spain

Dear Mr. and Mrs. Masie:

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,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Law Bureau

STATE TAX COMMISSION

DECISION

A formal hearing was held at the offices of the State Tax Commission, Two World Trade Center, New York, New York, at 9:30 A.M. on June 11, 1974, before L. Robert Leisner, Hearing Officer. The taxpayer appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq., of counsel).

Whether petitioner, Hans H. Masie, was carrying on an unincorporated business or was an employee during the year 1970?

1. Petitioners, Hans H. Masie and Dorothy G. Masie, timely filed resident New York State income tax return for the year 1970, but Hans H. Masie failed to file an unincorporated business tax return for 1970.

2. A Notice of Determination of deficiencies in unincorporated business tax for the year 1970 was issued on June 26, 1972, against the taxpayer under File No. 0-54339143.

3. The taxpayer petitioned for a redetermination of the deficiencies.

4. Petitioner, Hans H. Masie d/b/a H.H. Masie Toiletries, manufactured cologne and toilet waters under an alcohol tax permit issued in 1942. In 1953, he ceased the manufacture of these products and the manufacture was taken over by another firm. Petitioner continued to service his customers as a salesman for this product and paid an unincorporated business tax on his income therefrom from 1953 to 1969.

5. In 1953, Hans H. Masie, became affiliated with Trina, Inc., Fall River, Massachusetts, a manufacturer of travel and cosmetic kits. Petitioner was a manufacturer's representative. He was compensated for his services to Trina, Inc. on a commission basis. The company limited him to a specific territory which had been revised and changed by the company in the course of his employment.

6. Petitioner, Hans H. Masie, solicited orders from retailers for the Trina, Inc. The merchandise was sold in the name of and on account of Trina, Inc. Although petitioner was required to make periodic reports to the company with respect to his clients, he was not obligated to report daily. Trina, Inc. required petitioner's presence at the Fall River, Massachusetts,

factory at frequent intervals to discuss sales and for meeting with other representatives. Petitioner was responsible for conducting some of his business from the showroom which Trina, Inc. maintained at 350 Fifth Avenue, New York, New York. Petitioner took a vacation the two weeks each year when Trina, Inc. closed its factory.

7. Trina, Inc. withheld no taxes on petitioner's commissions. The company did not pay social security, unemployment insurance or workmen's compensation on his earnings. Petitioner received \$20 per week as compensation for his entertainment expenses from the company. The company also paid a percentage of his travel expenses when the servicing of an account required petitioner to make an overnight trip. Petitioner paid all the rest of his own expenses including telephone, stationery and auto and was not reimbursed by Trina, Inc.

8. Petitioner, maintained a display room at 156 Fifth Avenue, New York, New York, for the purpose of keeping samples of Trina, Inc.'s merchandise. During the first three months of 1970, petitioner employed a senior citizen to answer the telephone three days a week for four hours a day at the above location. Thereafter he had no employees. Petitioner did his paper work in connection with his sales activities at home. His wife assisted him without compensation.

9. Petitioner was not permitted to represent any other competing manufacturer but could continue to sell the H.H. Masie Toiletries products.

10. From 1953 to 1969, petitioner filed and paid unincorporated business tax on his earnings from Trina, Inc. For the year 1970, however, on the premise that he was an employee of Trina, Inc. he ceased to file, but it does not appear that he demanded a refund for prior years.

11. During 1970, petitioner claimed over \$8,000 as business expenses in connection with his sales operation.

CONCLUSIONS OF LAW

A. That the activities of petitioner were those of an independent sales agent with respect to Trina, Inc. and H.H. Masie Toiletries and constituted the carrying on of an unincorporated business.

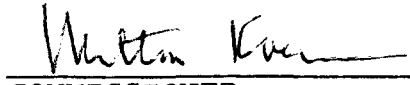
B. The petition is denied and the determination of a deficiency in income tax is sustained.

C. Pursuant to the Tax Law, interest shall be added to the amount due until paid.

DATED: Albany, New York
October 9, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER