

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ROBERT MICHAELS

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)~~ 1968 :

State of New York
County of Albany

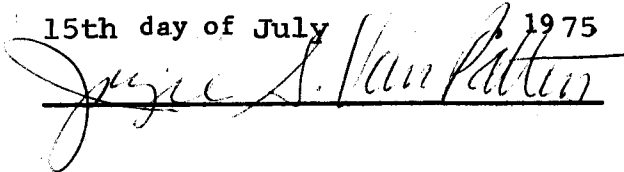
JANET MACK , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 15th day of July , 19 75, she served the within
Notice of Decision (~~on Determination~~) by (certified) mail upon Robert Michaels

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Robert Michaels
Kings Point
Apartment Waterford B-44
Delray Beach, Florida, 33444
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.

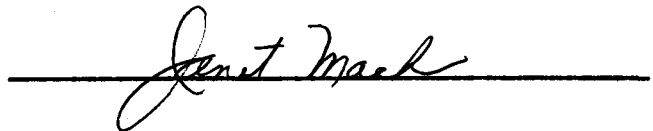
That deponent further says that the said addressee is the (~~representative~~
~~of~~) petitioner herein and that the address set forth on said wrapper is the last
known address of the (~~representative of the~~) petitioner.

Sworn to before me this

15th day of July 1975



Joyce L. Van Patten



Janet Mack



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.
~~XXXXXXXXXXXX~~ 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
July 15, 1975

Mr. Robert Michaels
Kings Point
Apartment Waterford B-44
Delray Beach, Florida 33444

Dear Mr. Michaels:

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

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


Paul B. Coburn
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ROBERT MICHAELS	:	
for Redetermination of Deficiency or	:	DECISION
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1968.	:	

Petitioner, Robert Michaels, residing at Kings Point, Apt. Waterford B44, Delray Beach, Florida 33444, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1968. (File No. 8-18707651). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 20, 1974, at 9:00 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq. of counsel).

ISSUES

I. Did petitioner, Robert Michaels' selling activities during the year 1968 constitute the carrying on of an unincorporated business?

II. If petitioner, Robert Michaels, was carrying on an unincorporated business during the year 1968, what portion of the income derived therefrom should be allocated to New York State?

FINDINGS OF FACT

1. Petitioner, Robert Michaels, and his wife filed a New York State combined income tax return for the year 1968. He did not

file a New York State unincorporated business tax return for said year.

2. On August 30, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert Michaels, imposing unincorporated business tax in the sum of \$316.51 upon the income received by him from his activities as a salesman during the year 1968. It also imposed additional personal income tax for said year in the sum of \$131.18 in accordance with a Federal audit, which additional assessment is not being contested by him. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against him in the sum of \$511.47.

3. Petitioner, Robert Michaels, was an electrical products salesman during the year 1968. He represented two unaffiliated firms in the sale of said merchandise. The products sold for each firm were noncompetitive. He sold the products of the two firms to the same customers. He did not have any employees.

4. During the year 1968, the firms for whom petitioner, Robert Michaels, sold electrical products did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him, with the exception of \$500.00 on which one of the firms withheld said taxes. The said sum represented reimbursement for maintaining an answering service and mail drop in New York. He was not reimbursed by any of the firms for any other business expenses. He deducted said expenses on Schedule "C" of his Federal income tax return. He maintained a self-employed retirement deduction plan. One of the firms covered him for unemployment and disability insurance. He reported his commission

income as "business income" on his New York State income tax return. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his sales activities and techniques or over the time that he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, Robert Michaels, did not have an office or regular place of business outside of New York State during the year 1968. Approximately fifty percent of his sales were made to customers located outside of New York State.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Robert Michaels, from the firms he represented during the year 1968 constituted income from his regular business of selling electrical products and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Robert Michaels, during the year 1968 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That since petitioner, Robert Michaels, did not have a regular place of business outside of the State of New York during the year 1968, all of his business income, including the income derived from out-of-state sales during the period, was properly

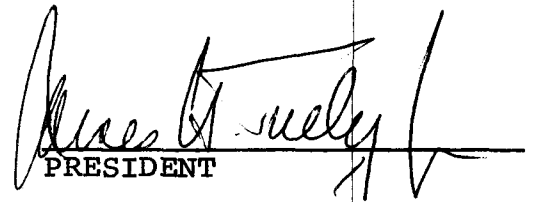
allocated to New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

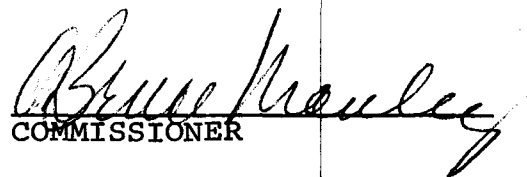
D. That the petition of Robert Michaels is denied and the Notice of Deficiency issued August 30, 1971, is sustained.

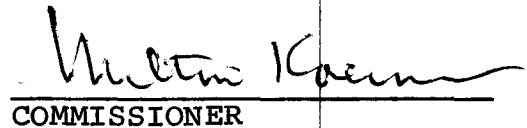
DATED: Albany, New York

July 15, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER