

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JEROME ALPERN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~xxxxxx~~ :
1968, 1969, 1970 and 1971.

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 13th day of July , 1976, she served the within
Decision by (certified) mail upon Jerome Alpern

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Jerome Alpern
220-55 46 Avenue
Bayside, NY 11361

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (~~representative~~
~~xxxxxx~~) 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

13th day of July , 1976

Mary Giff

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JEROME ALPERN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or Period(s) :
1968, 1969, 1970 and 1971.

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 13th day of July , 1976, she served the within
Decision by (certified) mail upon Fred Goldschmidt, CPA

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Fred Goldschmidt, CPA
6 Tanwood Drive
Massapequa, NY 11758

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative
of the) 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

13th day of July , 1976.

Mary L. Hoff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

July 13, 1976

TELEPHONE: (518) **457-3850**

Mr. Jerome Alpern
220-55 46 Avenue
Bayside, NY 11361

Dear Mr. Alpern:

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

Please take further notice that pursuant to
Section **(E) 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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Frank J. Puccia
Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JEROME ALPERN :
for a Redetermination of a Deficiency :
or for Refund of Unincorporated :
Business Tax under Article 23 of :
the Tax Law for the Years 1968, 1969, :
1970 and 1971. :

DECISION

Petitioner, Jerome Alpern, 220-55 46 Avenue, Bayside, New York 11361, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for 1968, 1969, 1970 and 1971. (File Nos. 0-58964924 and 1-78907743.) A small claims hearing was held before Harry Huebsch, Hearing Officer, May 10, 1976, at 3:00 P.M., at the officer of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared in person accompanied by his representative, Fred Goldschmidt, C.P.A. The Income Tax Bureau appeared by Peter J. Crotty, Jr., Esq., (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether or not petitioner's income from his activities as a salesman is subject to unincorporated business tax.

FINDINGS OF FACT

Petitioner, Jerome Alpern, timely filed personal income tax returns for 1968, 1969, 1970 and 1971. On audit, petitioner's income from his sales activity was held subject to unincorporated business tax by the Income Tax Bureau.

Jerome Alpern worked for one principal, Sima Fabrics, selling material from swatch samples to retailers. He was paid 6% commission on gross sales. He was not reimbursed for any expenses incurred. No deductions were withheld from his commission payments by his employer. Petitioner filed a Federal Schedule C and contributed to his own retirement plan (Keogh). Petitioner's employer does not supply office space. Petitioner maintains an office in his home and has his own distinctive letterhead which he uses in correspondence with customers. There is no written employment contract. Petitioner may pick up new accounts. Petitioner is not told what hours to work or when he may take a vacation. He decides what customers to call on and when he will call on them.

A letter, dated January 23, 1973, from the petitioner to the Income Tax Bureau, states that he considers himself a free agent and that his sales activities are not supervised, and that the only control imposed upon him is with respect to territory.

CONCLUSIONS OF LAW

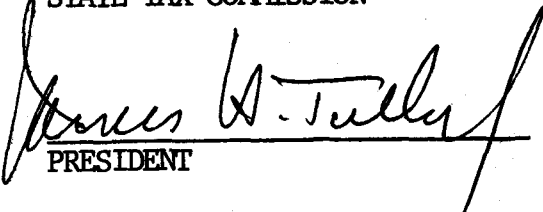
Petitioner, Jerome Alpern, is an independent agent rather than an employee within the intent and meaning of NYCRR. 203.10(b).

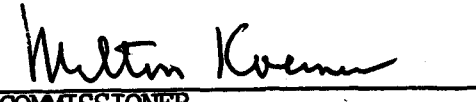
His sales activities constitute the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and the income from his sales activities is subject to unincorporated business tax.

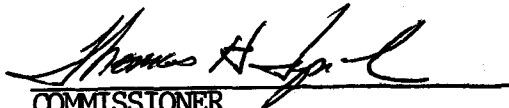
The petition of Jerome Alpern is denied and the Notices of
Deficiency dated November 26, 1973 and January 27, 1975, are sustained.

DATED: Albany, New York
July 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER