

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WALTER F. BRIGGS

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) ~~1967~~ 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 20th day of August , 1976, she served the within

Notice of Decision by (certified) mail upon Walter F. Briggs

(~~representative of~~) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Walter F. Briggs
128 Oxford Road
New Hartford, New York 13413

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

20th day of August , 1976.

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WALTER F. BRIGGS

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(x) 23 of the :
Tax Law for the Year(~~xxxx~~Period(s) 1968.:
~~xxxx~~

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 20th day of August , 1976 , she served the within
Notice of Decision by (certified) mail upon Richard Kehoe, Esq.

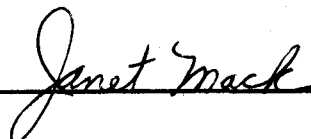
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Richard Kehoe, Esq.
Mayro Building
Utica, New York

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 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

20th day of August , 1976.





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

August 20, 1976

TELEPHONE: (518) ~~437-3850~~

Mr. Walter F. Briggs
128 Oxford Road
New Hartford, New York 13413

Dear Mr. Briggs:

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.

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,

Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WALTER F. BRIGGS	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Unincorporated	:	
Business Taxes under Article 23 of	:	
the Tax Law for the Years 1965	:	
through 1968.	:	

Petitioner, Walter F. Briggs, 128 Oxford Road, New Hartford, New York 13413, petitioned for a redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1965 through 1968.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, 207 Genesee Street, Utica, New York, on March 13, 1975, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Richard Kehoe, Esq. and the Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq. and Brian E. Thayer, senior income tax examiner.

ISSUE

The issue in this case is whether income earned in the petitioner's capacity as a multi-line manufacturer's sales representative is taxable as unincorporated business income under Article 23 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Walter F. Briggs, timely filed New York State tax resident returns for the years 1965 through 1968, but did not file any unincorporated business tax returns.

2. A Notice of Determination of deficiencies in unincorporated business taxes for the years 1965, 1966 and 1967 was issued on July 28, 1969, against the taxpayer under File No. 76878040. A second Notice of Determination of deficiencies in unincorporated business taxes for the year 1968 was subsequently issued on August 31, 1970, against the taxpayer under File No. 8-24410939.

3. During the years in question, petitioner, Walter F. Briggs, worked as a multi-line manufacturer's sales representative, in the heating and plumbing accessories field representing from six to nine companies each year. In 1968, he represented the following concerns: American Metal Products; Lynn Products Company, Incorporated; Herr-Midifier Company, Incorporated; Macco Products; Cemco, Inc.; and Fluid Master, Inc.

4. Petitioner's business involved representing these heating and plumbing accessory concerns in the area designated as the up-state New York region, selling primarily to various wholesalers. He was free to arrange his

own travel schedule, which usually involved traveling at least four days a week. Most instructions from the companies came in the form of general circulars addressed to all salesmen and sales representatives, which were received by the petitioner at irregular intervals throughout the year. His daily activities were not directed, and he only occasionally filed reports with the various represented companies. While he was required not to work for competing companies, and expected to equally divide his time among the several concerns, he was not required to work any specifically scheduled hours.

5. Petitioner's compensation was in the form of commission on sales. None of the represented companies withheld taxes or social security payments from his commissions, nor did he participate in any company's pension plan.

6. Petitioner worked from his home, employing no secretarial help. He received no reimbursement for expenses incurred in the course of his business activities from any of the companies involved.

7. Petitioner designated himself as a sales representative on his own business cards.

8. Petitioner filed Federal Schedules "C", "C-2" and "C-3".

9. Petitioner has stated that his business activities were of the same nature during all four years in question.

CONCLUSIONS OF LAW

A. Petitioner, Walter F. Briggs activities as a multi-line manufacturer's sales representative during the years 1965 through 1968 constituted the carrying on of an unincorporated business under section 703 of the Tax Law, and as such, income derived thereby is taxable.

B. The petition is denied and the determinations of deficiencies in unincorporated business taxes are sustained.

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

DATED: Albany, New York
August 20, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER