

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID W. and FRANCES U. DE ARMAND

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Unincorporated Business
Taxes under Article (3) 23 of the
Tax Law for the Year(s) ~~or Period(s)~~
1969 and 1970.

AFFIDAVIT OF MAILING

State of New York
County of Albany

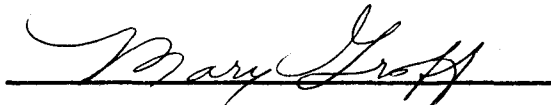
Janet Mack, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of December, 1976, she served the within
Notice of Decision by (certified) mail upon David W. and Frances U.
DeArmand (~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. & Mrs. David W. DeArmand
370 Central Park West, Apt. 506
New York, NY 10025

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

3rd day of December, 1976.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID W. and FRANCES U. DE ARMAND

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~~
1969 and 1970.

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 3rd day of December, 1976, she served the within
Notice of Decision by (certified) mail upon Bernard D. Praga, CPA

(representative of) the petitioner in the within proceeding,

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

as follows: Bernard D. Praga, CPA
56-35 174 Street
Flushing, NY 11365

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

3rd day of December, 1976

Mary Groff

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

December 3, 1976

TELEPHONE: (516) 457-3850

Mr. & Mrs. David W. DeArmand
370 Central Park West, Apt. 506
New York, NY 10025

Dear Mr. & Mrs. DeArmand:

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

Please take further notice that pursuant to
Section(2) **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
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	:	
DAVID W. and FRANCES U. DE ARMAND	:	DECISION
for a Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes under	:	
Article 23 of the Tax Law for the Years 1969	:	
and 1970.	:	

Petitioners, David W. and Frances U. De Armand, 370 Central Park West, Apt. 506, New York, New York 10025, have filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1969 and 1970. (File No. 0-58954125). A small claims hearing was held before Philip Mercurio, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 28, 1976. Petitioner, David W. De Armand, appeared pro se and for his wife, and by Bernard D. Praga, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the income received by the petitioner, David W. De Armand, from his activities as a sales representative is subject to the unincorporated business tax or is he an employee exempt from the unincorporated business tax?

FINDINGS OF FACT

1. Petitioners, David W. and Frances U. De Armand, filed a combined New York State income tax resident return for 1969 and 1970. An amended combined New York State income tax return for the year 1970 was subsequently filed by the petitioners dated February 28, 1972 showing an overpayment of \$114.87. This refund claim was applied against the unincorporated business tax assessed for the years 1969 and 1970 by the Income Tax Bureau.

2. On February 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, David W. and Frances U. De Armand, imposing unincorporated business tax upon the income received by the petitioner, David W. De Armand, from his activities as a sales representative during the years 1969 and 1970. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$148.36 including interest.

3. The petitioner, David W. De Armand, was a commission sales representative for a British printing company, Willmer Brothers Ltd. of Birkenhead, England, specializing in setting type of mathematical, technical and scientific books for American publishers.

4. During the years 1969 and 1970, the petitioner, David W. De Armand, represented only one firm, Willmer Brothers Ltd. strictly on a commission basis, with no withholding of payroll taxes. The petitioner paid his own self-employment taxes and was not covered by workmen's compensation or other employee related programs.

5. The petitioner, David W. De Armand, filed a Federal Form 1040, Schedule C for the years in question. He maintained an office in his home and did not have any assistance. He was reimbursed \$100.00 a month for "out of pocket" expenses from said firm.

6. In the agreement between the petitioner and said firm, the petitioner, David W. De Armand, is not allowed to represent any other competing types of firms. However, the petitioner is allowed to represent a non-competing type of firm.

7. Petitioner, David W. De Armand, developed his own leads with book publishers, set up his own work schedules and in all manners had sole control over his activities and techniques in making sales.

CONCLUSIONS OF LAW

A. That sufficient direction and control over the activities of petitioner, David W. De Armand, was not exercised by Willmer Brothers Ltd. to result in an employee/employer relationship.

B. That the income received by petitioner, David W. De Armand, from the firm he represented in the years 1969 and 1970 constituted income from his regular business of selling and not income as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

C. That the aforesaid activities of the petitioner, David W. De Armand, during the years 1969 and 1970, constituted the carrying on of an unincorporated business and his income derived therefrom is subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

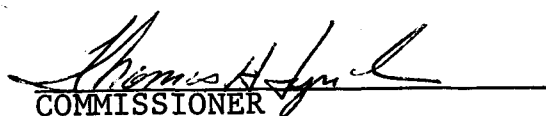
D. That the petition of David W. and Frances U. De Armand is denied and the Notice of Deficiency issued February 25, 1974 is sustained.

DATED: Albany, New York
December 3, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER