

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOSEPH H., JR. & CONSTANCE M.

DRISCOLL

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.

AFFIDAVIT OF MAILING

State of New York
County of Albany

Donna Scranton, 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 27th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Joseph H., Jr. & Constance M. Driscoll (~~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. Joseph H. Jr., Driscoll
53 Pine Avenue
Floral Park, New York 11001
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

27th day of September, 1976.

Donna Scranton

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

ADDRESS YOUR REPLY TO

September 27, 1976

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

Mr. and Mrs. Joseph H., Jr. Driscoll
53 Pine Avenue
Floral Park, New York 11001

Dear Mr. and Mrs. Driscoll:

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

Please take further notice that pursuant to
Section(§) **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: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOSEPH H., JR. and CONSTANCE M. DRISCOLL	:	DECISION
for a Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years	:	
1968 and 1969.	:	

Petitioners, Joseph H., Jr. and Constance M. Driscoll, 53 Pine Avenue, Floral Park, New York 11001, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for 1968 and 1969. (File No. 9-34531954).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 12, 1976, at 1:15 P.M. The petitioners appeared personally. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq., of counsel).

ISSUE

Whether or not petitioner's income from his sales activities was subject to unincorporated business tax.

FINDINGS OF FACT

On audit, the income resulting from the sales activities of Joseph A. Driscoll, Jr., was determined to be subject to unincorporated business tax. The Income Tax Bureau issued a Notice of Deficiency for 1968 and 1969 totaling \$557.26 plus interest.

Petitioner, Joseph H. Driscoll, Jr. had one employer, Master Lock Company, during the years in question. The only employment contract was a letter from Master Lock Company to the petitioner stating that he was selected to work for them as an independent manufacturer's representative. The letter designated the territory he was to cover; made mutual provisions for termination of the contract and stated a 3% commission remuneration. Also, petitioner was restricted in that he could not represent any other manufacturer.

Petitioner was given a list of established customers to call on. He could not solicit new accounts at his own volition. Advance daily and weekly time schedules showing visits to be made had to be submitted for approval to the sales manager. Daily reports showing persons visited and the results and comments from such visits were required. Petitioner was contacted by phone at least once a day by the sales manager, at the place where petitioner should be at that particular time. Petitioner was required to inform Master Lock Company, for approval, of any after working hours outside activities. He was not reimbursed for any expenses. No deductions were made from his commission payments.

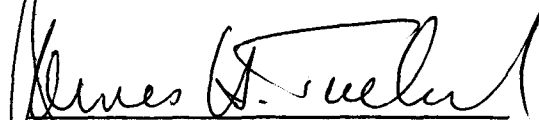
CONCLUSIONS OF LAW

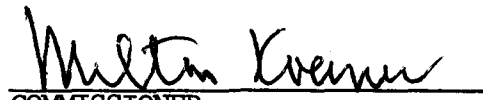
That the designation by petitioner's employer that petitioner was an independent manufacturer's representative was not determinative and that petitioner was an employee within the meaning of section 703(b) of the Tax Law.

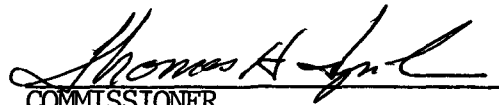
That the petition of Joseph H., Jr. and Constance M. Driscoll,
be granted and the Notice of Deficiency dated February 26, 1973, be
cancelled.

DATED: Albany, New York
September 27, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER