

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PERCY ETTINGER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article ~~21~~ 23 of the :  
Tax Law for the Year(s) ~~1967 and 1968~~ :  
1967 and 1968.

State of New York  
County of Albany

Catherine Steele, 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 26th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Percy Ettinger

~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Percy Ettinger  
Box 191  
Thornwood, New York 10594

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)~~ ~~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

26th day of August, 1976

Catherine Steele

Janet Much

STATE OF NEW YORK  
STATE TAX COMMISSION

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Taxes under Article ~~20~~ 23 of the :  
Tax Law for the Year(s) ~~1967 and 1968~~ :  
1967 and 1968.

State of New York  
County of Albany

Catherine Steele, 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 26th day of August, 1976, she served the within  
Notice of Decision by (certified) mail upon Irving Rosner, CPA

(representative of) the petitioner in the within proceeding,

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

as follows: Irving Rosner, CPA  
Irving Rosner & Co.  
30 South Broadway  
Yonkers, New York 10701

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

26th day of August, 1976.

Catherine Steele

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

August 26, 1976

TELEPHONE: (518) **457-3880**

Mr. Percy Ettinger  
Box 191  
Thornwood, New York 10594

Dear Mr. Ettinger:

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,

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

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

## STATE TAX COMMISSION

In the Matter of the Petition  
of  
PERCY ETTINGER  
for a Redetermination of a Deficiency or  
for Refund of Unincorporated Business  
Taxes under Article 23 of the Tax Law for  
the Years 1967 and 1968.

Petitioner, Percy Ettinger, Box 191, Thornwood, New York 10594, has filed a petition for redetermination of a deficiency or for a refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1967 and 1968 (File No. 8-14847834). A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 29, 1976, at 2:15 p.m. Petitioner, Percy Ettinger, appeared by Irving Rosner, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (James A. Scott, Esq., of counsel).

Is the income received by the petitioner, Percy Ettinger, from his activities as a sales representative, subject to the unincorporated business tax pursuant to Article 23 of the New York Tax Law?

FINDINGS OF FACT

1. Petitioner did not file unincorporated business tax returns for the years 1967 and 1968.
2. Upon audit, the Income Tax Bureau issued a deficiency, holding the income from his activities as a sales representative subject to the unincorporated business tax.
3. Petitioner is a sales representative, representing the firms of Lofts Pedigreed Seed, Inc., a New Jersey firm, and Loft Dahlgren, Inc., a Minnesota firm, strictly on a commission basis, with no withholding of payroll taxes and no reimbursement of business expenses. All sales orders, including those of Loft Dahlgren, Inc., were placed through Lofts Pedigreed Seed, Inc., who owned 50% of their stock.
4. Petitioner had no division of time and effort between the two firms he represented. Although he periodically reported to Lofts Pedigreed Seed, Inc., no restrictions or controls were imposed, by either firm, over his time and activities.
5. Petitioner paid his own self-employment taxes and was not covered by workmen's compensation or other employee-related programs.

CONCLUSIONS OF LAW

A. That sufficient direction and control were not exercised by Loft Pedigreed Seed, Inc., or Loft Dahlgren, Inc. to result in an employer-employee relationship.

B. That the petitioner is subject to the unincorporated business tax within the meaning and intent of section 703 of Article 23 of the Tax Law.

C. That the petition of Percy Ettinger is denied and the Notice of Deficiency issued May 24, 1971, is sustained.

DATED: Albany, New York  
August 26, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER