

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD GAINES and JOY GAINES

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)~~ 1965.:
:

AFFIDAVIT OF MAILING

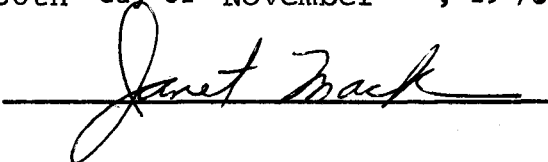
State of New York
County of Albany

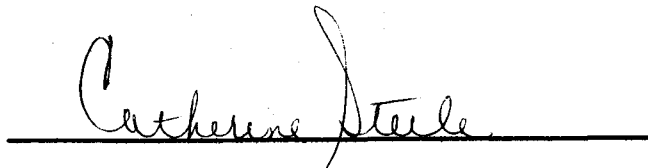
Catherine Steele, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of November, 1976, she served the within Notice of Decision by (certified) mail upon Bernard Gaines and Joy Gaines ~~(representative of the)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Bernard Gaines
39 Pebble Lane
Roslyn Heights, New York 11577
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

30th day of November, 1976







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

November 30, 1976

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

Mr. & Mrs. Bernard Gaines
39 Pebble Lane
Roslyn Heights, New York 11577

Dear Mr. & Mrs. Gaines:

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: ~~Revisions to Representations~~

Taxing Bureau's Representative:

STATE TAX COMMISSION

Petitioners, Bernard Gaines and Joy Gaines, 39 Pebble Lane, Roslyn Heights, New York 11577, filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1965. (File No. 46239113). 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 April 30, 1976, at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (James Scott, Esq. of counsel).

Whether petitioner Bernard Gaines' business activities for the tax year 1965, constitute the carrying on of an unincorporated business, subject to unincorporated business tax imposed by Article 23 of the Tax Law.

1. The petitioners, Bernard Gaines and Joy Gaines, timely filed a New York State income tax return for the year 1965. They did not file a New York State unincorporated business tax return for the said year.

2. A Notice of Deficiency for unincorporated business taxes for the year 1965 was issued on September 29, 1969, against the petitioners under File No. 46239113.

3. A petition for a redetermination of the deficiency was filed by petitioner.

4. During the year 1965, petitioner Bernard Gaines worked for F.W. Woolworth Company as an industrial and mechanical engineer and served in the capacity of an independent consultant. The F.W. Woolworth Company controlled the activities and duties of said petitioner. Mr. Gaines was under the direct control of his superior, who would direct and instruct him as to which duties he wanted him to perform.

5. Mr. Gaines was supplied with an office and a secretary. He did not maintain any other office. He was not covered by any retirement or health plans, nor was there any withholding or social security taxes withheld by the company. Said petitioner was reimbursed for incidental expenses.

6. For the duration of Mr. Gaines' service with Woolworth, he received no other compensation from any other company and only worked for the one employer. He was required to sign in every morning and work a normal work day.

CONCLUSIONS OF LAW

Although F.W. Woolworth Company called petitioner Bernard Gaines a consultant, the amount of supervision control and restriction imposed on his activities by his employer created such an employer-employee relationship that said petitioner is considered to be an employee within

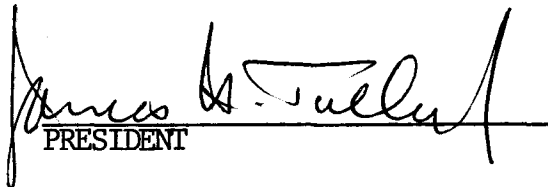
the meaning and intent of section 703(b) of the Tax Law.

The petitioner Bernard Gaines' activities as a consultant for F.W. Woolworth Company did not constitute the carrying on of an unincorporated business under section 703 of the Tax Law during the year 1965.

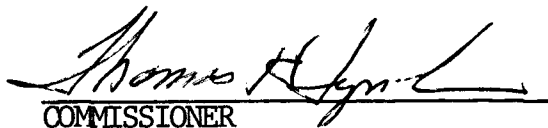
The petition of Bernard Gaines and Joy Gaines is granted and the Notice of Deficiency issued September 29, 1969 is cancelled.

DATED: Albany, New York
November 30, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER