

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HOWARD GOLDBERG

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) ~~xxxPeriod(s)~~ :
1968 and 1969.

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 28th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Howard Goldberg

~~(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. Howard Goldberg
Lake Massasecum
Bradford, New Hampshire 03221

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)~~
~~xxxthe~~ 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

28th day of September, 1976

Catherine Steele

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

September 28, 1976

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

Mr. Howard Goldberg
Lake Massasecum
Bradford, New Hampshire 03221

Dear Mr. Goldberg:

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.

~~xxxxxx Bureau's Representative:~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HOWARD GOLDBERG	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1968 and 1969.	:	

Petitioner, Howard Goldberg, Lake Massasecum, Bradford, New Hampshire 03221, filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for 1968 and 1969. (File No. 9-34528463). 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 May 27, 1976. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the income from the petitioner's activities as a manufacturer's representative is subject to the unincorporated business tax?

FINDINGS OF FACT

Petitioner did not file an unincorporated business tax return for 1968 and 1969. Upon audit, the Income Tax Bureau issued a deficiency holding the income from his activities as

(2)

manufacturer's representative subject to the unincorporated business tax.

Petitioner is a manufacturer's representative, representing several manufacturing concerns and other sales representatives, strictly on a commission basis, with no withholding of payroll taxes and no reimbursement of business expenses. He was not covered by an employee pension plan or by other employee related programs, but rather, he contributed to his own pension plan and took advantage of the self-employed retirement deduction on his personal income tax return.

Petitioner asserted that his territory was restricted and limited. Although he periodically reported to various concerns and activities, petitioner was not required to divide his time and effort. They did not exercise any supervision or control over his sales activities or to the time and effort that he devoted to such sales.

CONCLUSIONS OF LAW

That the income received by petitioner, Howard Goldberg, from the firms he represented during the years 1968 and 1969 constituted income from his regular business of selling and not

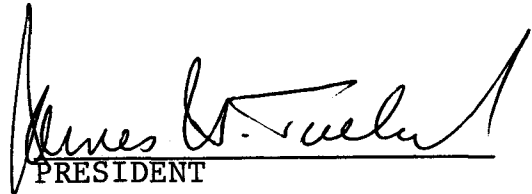
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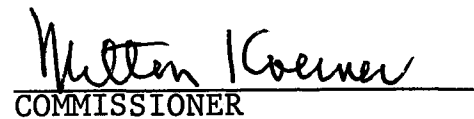
compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of Section 703(b) of the Tax Law.

Petition of Howard Goldberg is denied and the Notice of Deficiency issued January 31, 1972 is sustained.

DATED: Albany, New York
September 28, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER