

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JAMES L. GRATHWOL

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~~ 1967, :
1968, 1969 and 1970.

State of New York
County of Albany

Carmen Mottolese, 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 24th day of September, 1976, she served the within Notice of Decision by (certified) mail upon James L. Grathwol (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. James L. Grathwol
470 West End Avenue
New York, New York 10024

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~~) ~~xxxxxx~~ 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

24th day of September, 1976.

Carmen Mottolese

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

September 24, 1976

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-3850

Mr. James L. Grathwol
470 West End Avenue
New York, New York 10024

Dear Mr. Grathwol:

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

Please take further notice that pursuant to
Section ~~720~~ **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: ~~Rebelle, Bureau's Representative~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
JAMES L. GRATHWOL : DECISION
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law for :
the Years 1967, 1968, 1969 and 1970. :
:

Petitioner, James L. Grathwol, 470 West End Avenue, New York, New York, 10024, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1967, 1968, 1969 and 1970. (File Nos. 9-34660316 and 0-64170747).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, ~~Two~~ World Trade Center, New York, New York, on May 25, 1976, at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Jr., Esq., (Frank Levitt, Esq., of counsel).

ISSUE

Did Petitioner, James L. Grathwol's activities as a employment placement manager during the years 1967, 1968, 1969 and 1970 constitute the carrying on of an unincorporated business?

FINDING OF FACT

1. Petitioner, James L. Grathwol, filed New York State income tax resident returns for the years 1967, 1968, 1969 and 1970.

He listed his occupation as "Placement Manager" on said returns. He did not file New York State unincorporated business tax returns for said years.

2. The Income Tax Bureau issued two statement of audit changes against petitioner, James L. Grathwol. The first Statement of Audit Changes was issued on April 14, 1971, for the years 1967, 1968 and 1969 and the second was issued on November 9, 1973, for the year 1970. These statements imposed unincorporated business taxes in the sum of \$2,811.74 upon the income received by the petitioner from his activities as Employment Placement Manager. It also imposed a penalty pursuant to section 685(A) of the Tax Law in the sum of \$850.82 for failure to file unincorporated business tax returns for said years.

In accordance with the aforesaid Statement of Audit Changes, the Income Tax Bureau issued notice of deficiencies in the amount of \$3,964.49.

3. Petitioner, James L. Grathwol, was employed exclusively by Career Builders Agency, an employment agency as a placement manager during 1967, 1968, 1969 and 1970. He maintains no written agreement with his employer, but he is not allowed to solicit clients for his own account nor for other employment agencies.

He is compensated strictly on a commission basis. His employer did not withhold any payroll taxes from commissions paid to him.

4. Petitioner, James L. Grathwol, listed his income and expenses on Schedule C of his Federal income tax returns for 1968 and 1969. He filed Schedule C-3 a computation of social security self-employment tax for 1968.

5. Petitioner, James L. Grathwol, is not licensed as an employment

agency in New York State and is therefore not permitted by law to act for his own account.

6. The petitioner, James L. Grathwol, is provided with an office by his employer. He is restricted, by his employer, the type of clientele he may solicit.

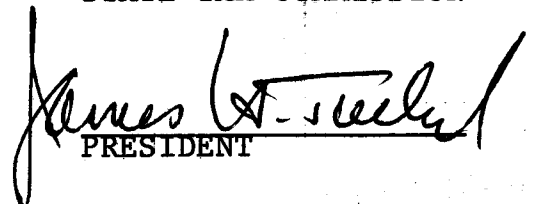
CONCLUSIONS OF LAW

A. That the income received by petitioner, James L. Grathwol, from his activities as a placement manager during the years 1967, 1968, 1969 and 1970, constitutes compensation 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.

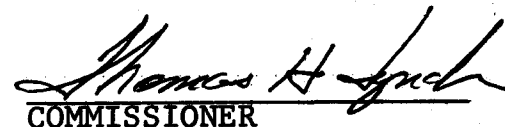
B. That the petition of James L. Grathwol is granted and the notice of deficiencies issued on February 25, 1974 and May 20, 1974 are cancelled.

DATED: Albany, New York
September 24, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER