

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CARLYLE KARR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (8) 23 of the :
Tax Law for the Year(s) ~~1965, 1966, 1967 and 1968.~~ :
1965, 1966, 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 17th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Carlyle Karr (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Carlyle Karr
15 Salem Drive
Scarsdale, New York 10583
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

17th day of September, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CARLYLE KARR

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(xx)~~ 23 of the :
Tax Law for the Year(s) ~~xxx~~ ~~xxxx~~ ~~xxxx~~ :
1965, 1966, 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 17th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Louis J. Jasne, Esq.

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

as follows: Louis J. Jasne, Esq.
6240 Riverdale Avenue
Bronx, New York 10471

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
17th day of September, 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

September 17, 1976

TELEPHONE: (518) **457-3830**

Mr. Carlyle Karr
15 Salem Drive
Scarsdale, New York 10583

Dear Mr. Karr:

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

Please take further notice that pursuant to
Section ~~704~~ **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,

Paul E. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CARLYLE KARR	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1965, 1966, 1967 and	:	
1968.	:	

Petitioner, Carlyle Karr, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966, 1967 and 1968. (File No. 8-28312732). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 16, 1974, at 10:45 a.m. Petitioner appeared by Louis J. Jasne, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Did petitioner, Carlyle Karr's, activities on behalf of Teddy Sportswear, Inc., during the years 1965, 1966, 1967 and 1968, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Carlyle Karr, and his wife filed New York State combined income tax returns for the years 1965, 1966, 1967 and 1968. He did not file New York State unincorporated business tax returns for said years.

2. On May 24, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Carlyle Karr, imposing unincorporated business tax upon the income received by him as a salesman during the years 1965, 1966, 1967 and 1968. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$4,027.55.

3. Petitioner, Carlyle Karr, was vice-president and secretary of Teddy Sportswear, Inc. during the years 1965 through 1968. Flor Fernandez was the president and treasurer of the corporation. They each owned 50% of the stock of the corporation. The corporation operated a factory which did contract labor on ladies garments. Flor Fernandez oversaw the operation of the factory. Petitioner, Carlyle Karr, was the outside man. He contacted manufacturers of ladies garments and arranged with them to contract with the corporation to sew the pre-cut garments. They had an oral agreement that profits and losses would be divided equally. All substantial business decisions involving the corporation were jointly made by them.

4. During the years 1965, 1966 and 1967, all of petitioner, Carlyle Karr's income, from his sales activities with the exception of \$13.23, were received from Teddy Sportswear, Inc. During the year 1968, all of his income from his sales activities, with the exception of \$4,739.93, was received from the corporation. This exception represented work that the corporation could not handle because it was too busy. He, therefore, placed the business elsewhere and received a commission.

5. During the years 1965, 1966, 1967 and 1968, Teddy Sportswear, Inc. did not withhold Federal or New York State income taxes or social security tax from the compensation paid to petitioner, Carlyle Karr. It did not list him as a corporate officer on its corporate income tax returns. The corporation covered him for workmen's compensation insurance. It partially reimbursed him for his business expenses. He reported his income and deducted unreimbursed business expenses on Schedule "C" of his Federal income tax returns. He did not have any employees. He did not maintain his own office.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Carlyle Karr, during 1965, 1966, 1967 and 1968 were those of an independent contractor.

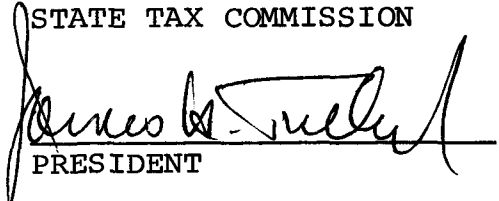
B. That the income received by petitioner, Carlyle Karr, from Teddy Sportswear, Inc. during the years 1965, 1966, 1967 and 1968 was derived from his activities as an independent contractor and, as such, was subject to unincorporated business tax.

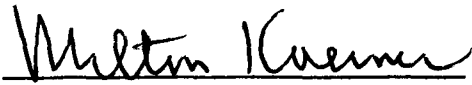
C. That the commissions of \$13.23 received in 1966 and \$4,739.93 received in 1968 by petitioner, Carlyle Karr, constituted business income subject to unincorporated business tax.

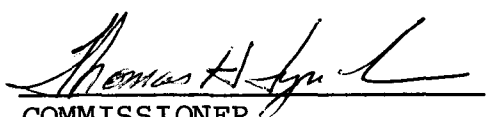
D. That the Notice of Deficiency issued May 24, 1971, is sustained and the petition of Carlyle Karr is denied.

DATED: Albany, New York
September 17, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER