

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL ORLING

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~xxxxxx~~ :  
1964 and 1965.

State of New York  
County of Albany

Janet Mack , 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  
Decision by (certified) mail upon Michael Orling  
(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Michael Orling  
69 Shelter Lane  
Roslyn Heights, NY 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~~  
~~xxxxxx~~) petitioner herein and that the address set forth on said wrapper is the  
last known address of the (~~representative of~~) petitioner.

Sworn to before me this

24th day of September , 1976

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MICHAEL ORLING

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) ~~or Period(s)~~ :  
1964 and 1965.

State of New York  
County of Albany

Janet Mack, 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 Decision by (certified) mail upon Louis Levine, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Louis Levine, CPA  
11 West 42nd Street  
New York, New York 10036  
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

24th day of September, 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

September 24, 1976

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

Mr. Michael Orling  
69 Shelter Lane  
Roslyn Heights, NY 11577

Dear Mr. Orling:

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

Please take further notice that pursuant to  
Section(§) **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 B. Coburn  
Supervising Tax  
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
MICHAEL ORLING	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business :	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1964 and 1965.	:	

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Petitioner, Michael Orling, 69 Shelter Lane, Roslyn Heights, New York 11577, filed a petition for redetermination of deficiency in unincorporated business taxes under Article 23 of the Tax Law for the years 1964 and 1965. (File No. 46249326).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 10, 1975. Petitioner appeared by Louis Levine, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Michael Alexander, Esq. of counsel).

ISSUE

Whether petitioner, Michael Orling, was carrying on an unincorporated business during the years 1964 and 1965.

FINDINGS OF FACT

1. Petitioner, Michael Orling, timely filed New York State income tax returns for the years 1964 and 1965. He also filed an unincorporated business tax return for the year 1964. Petitioner did not file a New York State unincorporated business tax return for the year 1965.

2. On July 28, 1969, a Statement of Audit Changes was issued against the petitioner for unincorporated business tax plus penalties and interest in the sum of \$2,116.51 for the years 1964 and 1965. Accordingly, the Income Tax Bureau issued a Notice of Deficiency.

3. During the years 1964 and 1965, petitioner, Michael Orling, sold lamps for Wilmar Co., Inc., Bronx, New York. Petitioner sold Wilmar's products in an area designated by the corporation. Wilmar Co., Inc. allowed petitioner a portion of its showroom for his use. They supplied petitioner with no office space or secretarial help. Petitioner, Michael Orling, received an \$85.00 draw per week against his commissions from Wilmar Co., Inc. From this \$85.00 was deducted social security, as well as Federal and New York State withholding. The company paid hospitalization insurance for petitioner as well as unemployment insurance.

4. Petitioner, Michael Orling, also sold lamps for Morris Greenspan, Inc., a corporation based in Philadelphia, Pennsylvania. Morris Greenspan was the controlling shareholder of this corporation and of Wilmar Co., Inc. Petitioner Michael Orling's duties for Morris Greenspan, Inc. required that he cover the same territory as that which he covered for Wilmar Co., Inc. Petitioner received commissions on the products sold for Greenspan, Inc. That corporation withheld nothing from petitioner's commissions.

5. Petitioner, Michael Orling, also received commissions from Keystone, Inc. and Arnis during the years 1964 and 1965 for sales duties he performed. Petitioner had to receive permission to sell these lines from Wilmar Co., Inc.

6. Petitioner, Michael Orling, maintained a room in his home which he used as an office. Petitioner was not reimbursed by his principals for any expenses he incurred. He deducted his business expenses for cars, postage, gifts, etc. from his Federal returns for the years 1964 and 1965. The firms for whom petitioner, Michael Orling, sold merchandise during the years 1964 and 1965 did not exercise substantial direction or control over his sales activities and techniques or over the time he devoted to sales.

CONCLUSIONS OF LAW

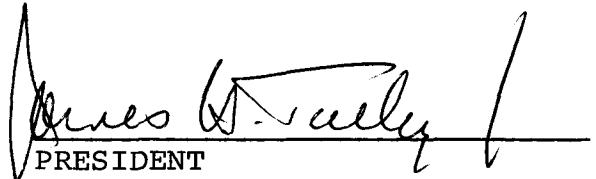
A. That the income received by petitioner, Michael Orling, from the firms that he represented during the years 1964 and 1965 constituted income from his regular business of selling lamps and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Michael Orling, during the years 1964 and 1965 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Michael Orling is denied and the Notice of Deficiency issued July 28, 1969 is sustained.

DATED: Albany, New York  
September 24, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER