

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ARCHIE E. ARMER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business Tax :  
Taxes under Article(s) 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1968 through 1973

State of New York  
County of Albany

Bruce Batchelor, 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 7th day of June, 1977, she served the within  
Decision by ~~(certified)~~ mail upon Archie E. Armer

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Archie E. Armer  
4705 N. Line, RD #5  
Ballston Spa, New York 12020

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)~~  
~~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

7th day of June, 1977

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

AFFIDAVIT OF MAILING

ARCHIE E. ARMER  
For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business Tax :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~1968 through 1973~~ :  
1968 through 1973

State of New York  
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 7th day of June, 1977, he served the within  
Decision by (~~certified~~) mail upon Frank V.  
Williams, CPA (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Frank V. Williams, CPA  
Edwards, Williams, McManus, Ricciardelli & Coffey, P.C.  
Box 599, Quaker Village  
Glens Falls, New York 12801  
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

7th day of June, 1977

Bruce Batchelor

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

June 7, 1977

TELEPHONE: (518) **457-1723**

Mr. Archie E. Arner  
4705 N. Line, RD #5  
Ballston Spa, New York 12020

Dear Mr. Arner:

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

Please take further notice that pursuant to  
Section(s) **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:  
**Frank V. Williams, CPA**  
**Edwards, Williams, McManus, Ricciardelli & Coffey, P.C.**  
**Box 599, Quaker Village**  
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~  
**Glens Falls, New York 12801**

**Taxing Bureau's Representative:**



II. Whether petitioner, Archie E. Armer, had reasonable cause for failing to file New York State unincorporated business tax returns and pay unincorporated business tax for the years 1968 through 1973, so as to justify the setting aside of penalties imposed.

FINDINGS OF FACT

1. Petitioner, Archie E. Armer, never filed an unincorporated business tax return for the years 1968 through 1973 inclusive.
2. The petitioner did file New York State residence tax returns for the years 1968 through 1973 inclusive.
3. On March 25, 1974, a Statement of Audit Changes was issued against the petitioner for unincorporated business tax plus penalties and interest in the amount of \$9,889.37 for the years 1968, 1969 and 1970. Thereafter and on June 24, 1974, a Statement of Audit Changes was issued against the petitioner for unincorporated business tax plus penalties and interest in the sum of \$856.32 for the year 1971. Thereafter, a Statement of Audit Changes was issued against the petitioner for unincorporated business tax plus penalties and interest in the amount of \$2,239.12 for the years 1972 and 1973. Said Statement of Audit Changes having been dated February 24, 1975. Accordingly, the Income Tax Bureau thereafter issued Notices of Deficiency.

4. During the years 1968 through 1973 inclusive, petitioner, Archie E. Armer, sold multi-line products for three firms, namely Modern Miltex Corp. of 280 East 134th Street, Bronx, New York; Polymer Tempera of 129 Corporation Way, Medford, Massachusetts; and Belmont Industries, Inc. The petitioner covered specified territories and accounts for the companies he represented, which territories were assigned by the companies in question.

5. The petitioner did not maintain an office or place of business and employed no assistants. Such office space and assistants, as needed, being supplied by the companies represented by the petitioner.

6. There was no arrangement between the petitioner and any of the companies which he represented as to the division of his time and work effort. The petitioner's time and effort was divided among the companies he represented as needed in order to cover each assigned territory and account.

7. That the petitioner was not free to accept work from other companies. Such requests were submitted by the petitioner and denied by the companies he represented.

8. The petitioner received a draw against his commissions and was obligated to absorb all expenses personally. Petitioner

never filed a federal Schedule C, instead, deducting his expenses under employee business expense. From this draw against commissions, social security was deducted by some of the companies petitioner represented some of the time. Petitioner's representative acknowledged in his arguments that on other occasions social security was not deducted.

9. The firms for whom the petitioner, Archie E. Armer, sold products did not exercise substantial direction or control over his sales activities and tactics or over the time he devoted to sales.

10. That under somewhat similar but unrelated conditions, the petitioner, Archie E. Armer, was previously determined by representatives of the New York State Department of Taxation and Finance to be an employee of the companies for which he sold and not subject to payment of an unincorporated business tax.

11. That there was no written agreement between the petitioner or the companies he represented.

#### CONCLUSIONS OF LAW

A. That the income received by the petitioner, Archie E. Armer, from the firms he represented during the years 1968 through 1973 constituted income from his regular business as a multi-line salesman, 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 activities of the petitioner, Archie E. Armer, during the years 1968 through 1973 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 petitioner, Archie E. Armer, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1968 through 1973 inclusive, having previously been found by the New York State Department of Taxation and Finance, while engaged in somewhat similar but unrelated activities to have been an employee not subject to the unincorporated business tax and having relied upon such prior determination in failing to file the unincorporated business tax returns in question. Therefore, the penalties assessed against the petitioner, Archie E. Armer, are waived.

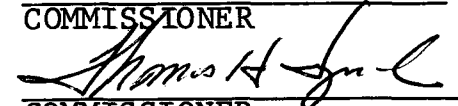
D. That the petitions of Archie E. Armer are granted to the extent of cancelling the penalties imposed by the Income Tax Bureau for the years 1968 through 1973 inclusive, and except as so granted the petitions are in all other respects denied.

DATED: Albany, New York  
June 7, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER