

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD BLUM and MOLLIE BLUM
D/B/U the firm name and style of
B. G. BLUM ASSOCIATES

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Unincorporated Business
Taxes under Article (a) 23 of the
Tax Law for the Year(s) ~~XXXXXX~~
May 31, 1966, 1967, 1968 and 1969.

State of New York
County of Albany

Marsina Donnini

, 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 July , 1977 , she served the within

Notice of Decision by (certified) mail upon Bernard Blum and Mollie Blum
D/B/U the firm name and style of

B. G. Blum Associates ~~XXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Bernard Blum and Mollie Blum
D/B/U the firm name and style of
B. G. Associates
295 Fifth Avenue
New York, New York 10016

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 ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

7th day of July , 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BERNARD BLUM and MOLLIE BLUM
D/B/U the firm name and style of
B. G. BLUM ASSOCIATES
For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (a) 23 of the :
Tax Law for the Year(s) ~~1966, 1967, 1968 and 1969~~ :
May 31, 1966, 1967, 1968 and 1969

AFFIDAVIT OF MAILING

State of New York
County of Albany

Marsina Donnini, 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 July, 1977, she served the within
Notice of Decision by (certified) mail upon Sol I. Rabinowitz, CPA of
Weinick, Sanders & Co. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sol I. Rabinowitz, CPA
Weinick, Sanders & Co.
One Astor Plaza
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

7th day of July, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

July 7, 1977

ADDRESS YOUR REPLY TO

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

Bernard Blum and Mollie Blum
D/B/U the firm name and style of
B. G. Associates
295 Fifth Avenue
New York, New York 10016

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,

PAUL B. 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	:	
BERNARD BLUM and MOLLIE BLUM	:	
doing business under the firm	:	
name and style of	:	DECISION
B. G. BLUM ASSOCIATES	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Fiscal	:	
Years Ending May 31, 1966, 1967, 1968 and	:	
1969.	:	

Bernard Blum and Mollie Blum, doing business under the firm name and style of B. G. Blum Associates, 295 Fifth Avenue, New York, New York 10016, filed a petition for the redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the fiscal years ending May 31, 1966, 1967, 1968 and 1969. (File No. 1031).

Said deficiency was asserted September 25, 1972, under consents fixing the amount of \$6,526.62, plus interest of \$1,613.27, for a total of \$8,139.89.

A formal hearing was held on July 12, 1976, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner appeared by Sol I. Rabinowitz, CPA of Weinick, Sanders & Co. The Income Tax Bureau appeared by Peter Crotty, Esq. (Solomon Sies, Esq. of counsel). The record of said hearing has been duly examined and considered.

ISSUE

Whether a business which allocates its inter-state income to New York on a formula basis may compute the gross sales factor of such formula so as to attribute to its out-of-state sales offices the sales made from such offices,

when the persons soliciting those sales are not employees but are independent contractors.

FINDINGS OF FACT

1. The petitioner is a partnership engaged in business as a sales representative, soliciting orders for various mills on a commission basis. The petitioner, B. G. Blum Associates, rents showrooms in various cities including New York, Dallas and Chicago. It has salesmen who work out of each showroom. These salesmen also handle lines of goods not handled by the petitioner. They are concededly independent contractors with petitioner and not its employees.

2. On its returns for unincorporated business tax, petitioner B. G. Blum Associates, allocated its income by use of the three factor formula. The property factor of the formula accounted for the rented office space both in and out of New York State. The salary factor of the formula accounted for all salaries paid as New York salaries. No account was taken of the commissions paid to salesmen who are independent contractors. The gross sales factor of the formula accounted for sales made by the salesmen attached to the out-of-state offices as attributable to those out-of-state offices.

CONCLUSIONS OF LAW

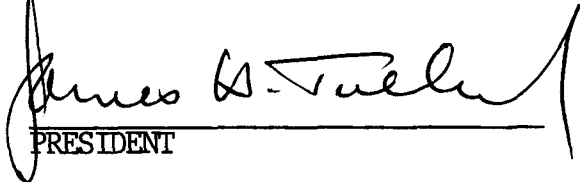
A. That the gross sales factor of the apportionment formula is properly computed by attributing to each office those sales made by all persons attached to such offices, whether such person is an employee or an independent contractor. This is provided in regulations to both Article 16-A of the Tax Law and Article 23 of the Tax Law (21NYCRR §287.1 question 81 item 3; 20 NYCRR §207.4(a)(3) and §207.4(b)(2) item 3).


B. That the deficiency is erroneous in part and shall be recomputed by the Income Tax Bureau in accordance herewith.

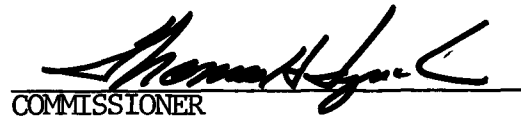
C. That said sum shall be due together with such interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York
July 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER