

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN CARROLL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business Taxes :
Taxes under Article (a) 23 of the :
Tax Law for the Year(s) ~~XXXXXX~~ :
1968, 1969, 1970 and 1971.

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 John Carroll

~~(representative of the)~~ the petitioner in the within proceeding,

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

as follows: Mr. John Carroll
484 Weymouth Drive
Wyckoff, New Jersey 07481

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)~~
~~(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
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN CARROLL

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) ~~1968, 1969, 1970 and 1971~~ :
1968, 1969, 1970 and 1971

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 Alvin R. Cowan, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alvin R. Cowan, Esq.
250 West 57th Street
New York, New York 10019

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

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

July 7, 1977

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) **497-1723**

Mr. John Carroll
484 Weymouth Drive
Wyckoff, New Jersey 07481

Dear Mr. Carroll:

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

Please take further notice that pursuant to
Section **(E) 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	:	
JOHN CARROLL	:	
for Redetermination of a Deficiency or	:	DECISION
for Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1968, 1969, 1970 and 1971.	:	

Petitioner, John Carroll, 484 Weymouth Drive, Wyckoff, New Jersey 07481, filed a petition for redetermination of a deficiency or refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969, 1970 and 1971 (File No. 00189).

A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 10, 1976 at 10:45 a.m. The petitioner appeared by Alvin R. Cowan, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Solomon Seis, Esq. of counsel).

ISSUE

Whether the services performed by petitioner, John Carroll, in the years 1968 through 1971 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, John Carroll, filed New York State income tax nonresident returns for the years 1968, 1969, 1970 and 1971. For the year 1971, petitioner filed a New York State unincorporated business tax return, but he did not file such returns for the three prior years.

2. On December 28, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, John Carroll, imposing unincorporated business tax for the years 1968, 1969, 1970 and 1971, in the sums of \$915.48, \$2,491.89, \$2,864.24 and \$719.13 respectively, upon the grounds that income from petitioner's activities was subject to the New York State unincorporated business tax. With interest and penalties, this totaled \$11,172.71. Accordingly, a Notice of Deficiency was issued for this amount.

3. Petitioner, John Carroll, was associated with Wofac Corporation, 21 East Euclid Avenue, Haddenfield, New Jersey. Petitioner's primary function during said years was to sell the consulting services of Wofac to large industrial clients.

4. Petitioner maintained an office at 10 East 49th Street, New York, New York in the name of Science Management Inc., the parent company of Wofac Corporation. The telephone at this office was also in the company's name.

5. The contract, by which the petitioner was associated with Wofac Corporation, described the petitioner, John Carroll, as an independent contractor. Further, it allowed for his termination at any time without cause.

6. Petitioner, John Carroll, was required by his contract with Wofac Corporation, to make reports at least twice a month on sales efforts. Any sales by petitioner were subject to Wofac's approval. The petitioner was guaranteed a draw of \$834.00 a month plus \$300.00 a month for out-of-pocket expenses, as partial reimbursement for phone and office expenses. Aside from the guaranteed draw, the petitioner was to receive commissions, but only on accepted sales, and these would be stopped if a client cancelled Wofac's services. Petitioner, John Carroll, was required in this contract to conform to Wofac's vacation policies and his sales territory was limited by Wofac.

7. Wofac specified working procedures in petitioner's contract of association, e.g., Servicing programs sold in the petitioner's territory; using Wofac's sales approaches; developing mailing lists for use at Wofac's discretion; obtaining Wofac's permission to hire sub-agents for petitioner's work.

8. The contract of association between petitioner, John Carroll, and Wofac required petitioner to promote Wofac's techniques to the exclusion of all techniques used by Wofac's competition. Further, it stated that the petitioner would not in any way indicate to any prospective client that any competitive techniques were superior to

or equal to Wofac's or that they would accomplish the same results as Wofac's techniques. Also, petitioner was restrained from dealing with customers of Wofac for two years after the termination of his relationship with them.

9. The contract terms stated that Wofac would not withhold income tax or pay social security on the petitioner's income. He maintained his own Keoughplan and filed a Schedule "C" as part of his Federal income tax return.

CONCLUSIONS OF LAW

A. That Wofac exercised a degree of control and direction over petitioner, John Carroll, and required petitioner's sole loyalty, to the extent that petitioner's services were not that of an unincorporated business in accordance with the meaning and intent of section 703(b) of the Tax Law (Lampel v. Proccacino, 46 A.D. 2d, 966, 362 N.Y.S. 2d 58; Greene v. Gallman, 39 A.D. 2d 270, 333 N.Y.S. 2d 787, affd. 33 NY 2d 778, 350 N.Y.S. 2d 415).

B. That the petition of John Carroll is granted and the Notice of Deficiency issued December 28, 1973 is cancelled.

DATED: Albany, New York
July 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER