

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MORRIS EDWAB

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) :
1967 - 1973

State of New York
County of Albany

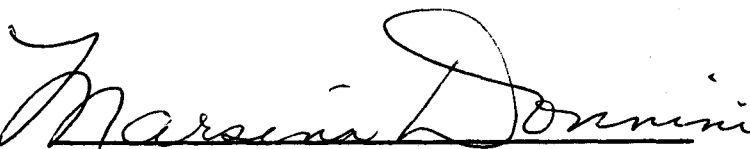
Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15 day of July, 19 77, she served the within NOTICE OF DECISION by (certified) mail upon Max Fried, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Max Fried, CPA
205 West 34th Street
New York, New York 10001
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.

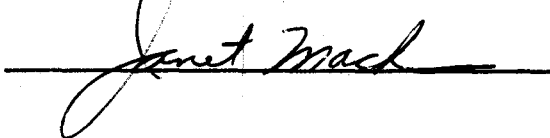
That deponent further says that the said addressee is the (representative of the) petitioner herein and that the address set forth on said wrapper is the last known address of the (representative of the) petitioner.

Sworn to before me this

15 day of July

, 19 77





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Tax Law for the Year(s) or Period(s) :
1967 - 1973

State of New York
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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 15 day of July, 1977, she served the within NOTICE OF DECISION by (certified) mail upon Morris Edwab (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Morris Edwab
27 Westwood Circle
Roslyn Heights, New York 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 of~~) (~~XXXXXX~~) petitioner herein and that the address set forth on said wrapper is the last known address of the (~~representative of~~) (~~XXXXXX~~) petitioner.

Sworn to before me this

15 day of July, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

July 15, 1977

**Mr. Morris Edwab
27 Westwood Circle
Roslyn Heights, New York 11577**

Dear Mr. Edwab:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) **722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

**Joseph Chyrywat
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MORRIS EDWAB	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1967 through 1973.	:	

Petitioner, Morris Edwab, residing at 27 Westwood Circle, Roslyn Heights, New York 11577, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1967 through 1973. (File No. 00429).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on January 27, 1977 at 10:45 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Max Fried, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Louis Senft, Esq. of counsel).

ISSUE

Whether the income received by the petitioner, Morris Edwab, during the years 1967 through 1973 as a sales representative is

subject to the unincorporated business tax or is he an employee exempt from the unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. During the years 1967 through 1973, the petitioner, Morris Edwab, was employed on a salary basis by National Backing Corporation as a sales representative. He also received commission income from National Rubber Manufacturing Company. The National Backing Corporation withheld Federal and state income taxes and social security taxes from the salary paid to the petitioner. He was covered for workmens compensation and unemployment insurance and other employee related plans (such as pension and medical plans).

2. Petitioner also received commission income as a sales representative, during the years 1967 through 1973, from Rubber Fabrics Company and the Isofoam Corporation, which were affiliated firms.

3. Petitioner, Morris Edwab, was not reimbursed for any business expenses by the firms he represented. He had an employment contract with National Backing Corporation. He had permission from National Backing Corporation to sell for the other firms he represented as long as their lines were not competitive.

4. The firms that the petitioner represented during the years 1967 through 1973 determined all policies of sales, regarding prices, credit terms and shipping dates. All correspondence with customers must be typed and appraised by the respective firms. Although the firms represented by the petitioner maintained certain controls and restrictions upon the petitioner's selling activities, they did not exercise any substantial supervision and control of his sales activities or techniques.

5. The commission income received by the petitioner, Morris Edwab, during the years 1967 through 1973, from Rubber Fabrics Company and Isofoam Corporation, and other unaffiliated firms, constituted receipts from his regular business as a sales representative.

6. That the aforesaid activities of petitioner, Morris Edwab, constituted the carrying on of an unincorporated business and his income derived therefrom is subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

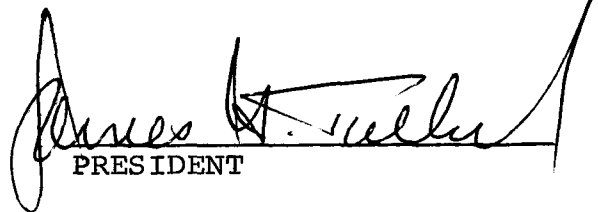
7. That the income received by the petitioner, Morris Edwab, during the years 1967 through 1973, as a sales representative with National Backing Corporation was so integrated and interrelated with his activities in connection with his

unincorporated business as to constitute part of a business regularly carried on by him and therefore, the salary received by him for said years from National Backing Corporation, is also subject to the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

8. The petition of Morris Edwab is denied and the notices of deficiency in the sums of \$7,135.70 and \$6,821.03 issued on November 29, 1971 and November 25, 1974 respectively, are sustained.

DATED: Albany, New York
July 15, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER