

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP EICHENTHAL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article 23 of the :
Tax Law for the Year(s) 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 24 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Philip Eichenthal (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Philip Eichenthal
1244 - 50th Street
Brooklyn, New York 11219 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 August, 1977.

Marsina Donnini

Janet Misch

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PHILIP EICHENTHAL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(9)~~ 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 24 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Isidore Eichenthal, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Isidore Eichenthal, CPA
4913 18th Avenue
Brooklyn, New York 11204
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 August, 1977.

Marsina Donnini

Janet Buck



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

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

August 24, 1977

Mr. Philip Eichenthal
1244 - 50th Street
Brooklyn, New York 11219

Dear Mr. Eichenthal:

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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
PHILIP EICHENTHAL	:	DECISION
	:	
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1968, 1969, 1970 and 1971.	:	

Petitioner, Philip Eichenthal, residing at 1244 - 50th Street, Brooklyn, New York 11219, filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968, 1969, 1970 and 1971 (File No. 14049). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on April 27, 1977 at 2:45 p.m. Petitioner appeared by Isidore Eichenthal, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove of counsel).

ISSUE

Did the selling activities of petitioner, Philip Eichenthal, during the years 1968, 1969, 1970 and 1971 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner was employed by Imperial Bag and Paper Co., Inc. as a commission salesman for over thirty years. He worked ten or twelve hours a day, six days a week for said principal. Petitioner did not employ assistants and never held himself out as doing business in his own name.

2. Petitioner was provided with desk space and telephone service without charge at his employer's place of business. He was assigned a specific territory to cover each day and could not take a vacation or any day off from work without the consent of his principal.

3. Petitioner attended sales meetings regularly. He was instructed as to the sales methods to be used for each new product. He was covered by his principal's group health insurance plan. He was provided with sales books and envelopes by his principal.

4. Petitioner had an office in his home which he used solely to process daily orders received. He did not have a business telephone number or letterhead. His principal did not withhold taxes or social security from his compensation and did not reimburse petitioner for most of the expenses he incurred.

CONCLUSIONS OF LAW

A. That the selling activities of petitioner, Philip Eichenthal, during the years 1968, 1969, 1970 and 1971 did not constitute the carrying on of an unincorporated business in accordance with the meaning and intent of section 703(a) of the Tax Law and his income derived therefrom constituted 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 petition of Philip Eichenthal is granted and the Notice of Deficiency in the amount of \$2,280.88 issued November 25, 1974 is cancelled.

DATED: Albany, New York
August 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER