

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
EVERETT J. FAHEY

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) ~~xxx~~ ~~xxxx~~ :
1965 through 1973

State of New York
County of Albany

John Huhn, 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 7 day of December, 1977, she served the within
Notice of Decision by (certified) mail upon Everett J. Fahey

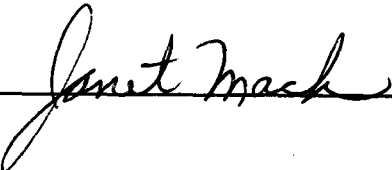
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Everett J. Fahey
RD 315A, Mill Road
Sag Harbor, New York 11963

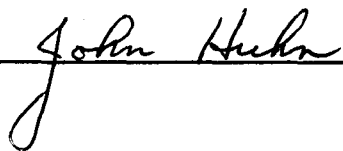
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of)~~
~~xxx~~ 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

7 day of December, 1977







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

December 7, 1977

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

Everett J. Fahey
RD 315 A, Mill Road
Sag Harbor, New York 11963

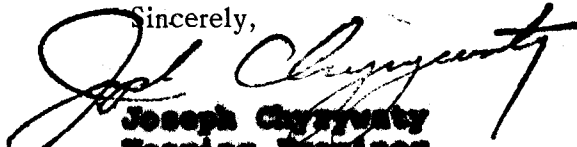
Dear Mr. Fahey:

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 Chapperty
Hearing Examiner

cc: ~~Petitioner's Representative~~

Taxing Bureau's Representative

NEW YORK STATE

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
EVERETT J. FAHEY	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years	:	
1965 through 1973.	:	

Petitioner, Everett J. Fahey, residing at RD 315A, Mill Road, Sag Harbor, New York 11963, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965 through 1973 (File No. 13168).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 23, 1976 at 1:15 P.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul Rosenkranz, Esq. of counsel).

ISSUE

Whether the income from petitioner, Everett J. Fahey's activities as a freight solicitor was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Everett J. Fahey, was a freight solicitor representing Be-Mac Transport Company (until July 31, 1969) the Port of Gulfport (until December 31, 1969) and Tose, Inc., which was the

only principal he represented after December 31, 1969. Petitioner's activities with Tose, Inc. after December 31, 1969 were limited to servicing his old accounts, at which time he no longer actively solicited new accounts.

2. The Port of Gulfport and Be-Mac Transport Company paid the petitioner specific, fixed amounts on a periodic basis, which the petitioner regarded as a salary income. However, no payroll taxes were withheld from his income and no wage statements were issued by said principals. Petitioner contended that the fixed amounts he received from the aforesaid companies during the years in question included repayments for the expenses he incurred in soliciting freight business on their behalf. Petitioner was paid strictly on a commission basis by Tose, Inc. Said corporation had a desk and phone in its general office for the petitioner, which he used about once a week. Petitioner also worked out of the living room of his home where he had a desk, a telephone and a typewriter.

3. Petitioner, Everett J. Fahey, maintained a retirement plan (Keogh Plan) for the self-employed, and paid self-employment taxes.

4. There was no division of the petitioner's time and effort between the various firms he represented.

5. Petitioner did not remember whether he had filed Federal schedules "C" for the years in question.

6. Petitioner listed his occupation as freight solicitor on his New York State income tax returns for the years in question.

On his 1965 and 1966 New York State income tax returns, he reported on schedules "A" the income he received from his principals for those years as being wages, salaries, tips, etc. However, on his 1967 through 1973 New York State income tax returns he reported (on schedules "A") the income he received from his principals for those years as business income.

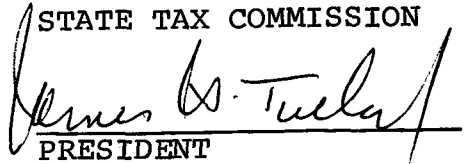
CONCLUSIONS OF LAW

A. That the petitioner, Everett J. Fahey, has not sustained the burden of proof necessary to show that his principals, collectively or individually, exercised sufficient direction and control over his activities so as to result in an employer-employee relationship within the meaning and intent of section 703(b) of the Tax Law.

B. That the activities of the petitioner during the years in question constituted the carrying on of an unincorporated business as a freight solicitor within the meaning and intent of section 703 of the Tax Law, and that the income he derived from said activities is subject to unincorporated business tax.

C. That the petition of Everett J. Fahey is denied and the notices of deficiency totalling \$6,322.79, issued on July 28, 1975 for the years 1965 through 1973 is sustained.

DATED: Albany, New York
December 7, 1977

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER