

In the Matter of the Petition

of

ROBERT A. 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 ~~(ss)~~ 23 of the
Tax Law for the Year ~~(ss) or Period(s)~~ 1971.:

State of New York
County of Albany

Bruce Batchelor, 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 14th day of January, 1977, she served the within
Notice of Decision by (certified) mail upon Robert A. Fahey

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

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

Mr. Robert A. Fahey
30 Westgate Drive
Bohemia, New York 11716

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
14th day of January, 1977.

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

January 14, 1977

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

Mr. Robert A. Fahey
30 Westgate Drive
Bohemia, New York 11716

Dear Mr. Fahey:

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,

Frank J. Puccio
Frank J. Puccio

Enc.

**Supervisor of Small
Claims Hearings**

cc: ~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ROBERT A. FAHEY : DECISION
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Year 1971. :

Petitioner, Robert A. Fahey, residing at 30 Westgate Drive, Bohemia, New York 11716, has filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1971 (File No. 1-84252280).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on July 15, 1976 at 10:45 a.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared pro se and by Harry Binder. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUE

Whether the activities of the petitioner, Robert A. Fahey, as a salesman during the year 1971 constitute the carrying on of an unincorporated business.

FINDINGS OF FACT

1. The petitioner, Robert A. Fahey, and his wife timely filed a New York State resident income tax return for the year 1971. He did not file an unincorporated business tax return for said year.

2. On October 27, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioner, Robert A. Fahey, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the year 1971. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$417.01.

3. During the year 1971, the petitioner, Robert A. Fahey, was a salesman representing Chase Brass and Copper Co., and Taylor and Co. These firms were not affiliated with each other. For the period January 1, 1971 to February 28, 1971, the petitioner, Robert A. Fahey, was an employee paid on a salary basis by Chase Brass and Copper Co. On March 1, 1971,

the petitioner retired as an employee and became a commissioned salesman for said company.

4. The firms which petitioner, Robert A. Fahey, represented did not withhold Federal or New York State income taxes or social security tax from the commissions paid to petitioner, during the year 1971. They apparently did not cover him for unemployment insurance and he was not reimbursed for any of his business expenses. He was covered under the group health and life insurance plans of both companies.

5. The petitioner, Robert A. Fahey, reported the commissions and deducted the business expenses on a Federal schedule "C".

6. Petitioner, Robert A. Fahey, did not have a written employment contract with said firms. He was required to submit written reports, attend weekly meetings and report periodically by telephone.

CONCLUSIONS OF LAW

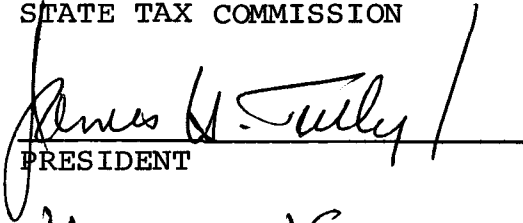
A. That the commission income received by petitioner, Robert A. Fahey, from the two firms that he represented during the year 1971 constituted income from his regular business of selling and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Robert A. Fahey, during the year 1971 constituted the carrying on of an unincorporated business and his income derived therefrom is subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Robert A. Fahey is denied and the Notice of Deficiency dated October 27, 1975 is sustained.

DATED: Albany, New York
January 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER