

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD FULLMAN

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)~~ :  
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 7 day of July, 19 77, she served the within  
Notice of Decision by (certified) mail upon Edward Fullman

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. Edward Fullman  
19 Cadillac Drive  
New Rochelle, New York 10804

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)~~  
~~XXXX~~ 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 July, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

EDWARD FULLMAN

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)~~ :  
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 7 day of July, 1977, she served the within Notice of Decision by (certified) mail upon Irving Star, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Irving Star, CPA  
c/o Rogow, Star & Co.  
654 Madison Avenue  
New York, New York 10021  
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

7 day of July, 1977.

Marsina Donnini

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

July 7, 1977

TELEPHONE: (518) ~~487-1723~~

Mr. Edward Pullman  
19 Cadillac Drive  
New Rochelle, New York 10804

Dear Mr. Pullman:

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

Please take further notice that pursuant to  
Section(s) **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. Puccia**

**Supervisor of Small Claims Hearings**

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK  
STATE TAX COMMISSION

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

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Petitioner, Edward Fullman, residing at 19 Cadillac Drive, New Rochelle, New York 10804, 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 years 1969, 1970 and 1971 (File No. 12090).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on October 25, 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 by Irving Star, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

ISSUE

Whether the income received by the petitioner, Edward Fullman, from his activities as a sales representative during the years 1969, 1970 and 1971, was subject to unincorporated business tax or was income earned as an employee and therefore exempt from unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The petitioner, Edward Fullman, was a commission sales representative representing Victory Container Corporation and Associated Finishers, Inc. during the years 1969, 1970 and 1971. These firms were not affiliated.

2. The commission income received from Victory Container Corporation for the years 1969, 1970 and 1971 was \$9,939.27, \$1,408.08 and \$31,725.73, respectively. Said firm did not withhold Federal and New York State income taxes or social security taxes from petitioner's commission income.

3. Petitioner received salary income of \$8,250.00, \$14,400.00 and \$7,050.00, respectively for the years 1969, 1970 and 1971 from Associated Finishers, Inc.

4. Petitioner apparently was not covered by any of his principals during the years 1969, 1970 and 1971, under any employee-related plans, such as pension and health plans.

5. Petitioner did not have any written employment contracts. He was not reimbursed for any of his business expenses. The firms for whom he performed services did not exercise any substantial supervision or control over his sales activities or techniques, or over the time he devoted to sales. He often sold the products of the two firms he represented to the same customers at the customers' buying offices.

6. That the income received by petitioner, Edward Fullman, from the firms he represented during the years 1969, 1970 and 1971 constituted income from his regular business of selling and

not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

7. That the aforesaid activities of the petitioner during the years 1969, 1970 and 1971 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

8. The petition of Edward Fullman is denied and the Notice of Deficiency in the sum of \$2,059.86 issued July 28, 1975 is sustained.

DATED: Albany, New York  
July 7, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER