

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GARY J. HEARN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(x) 23 of the :  
Tax Law for the Year(s) ~~1968 through 1973~~ :  
1968 through 1973.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of April , 19 77, ~~he~~ served the within  
Notice of Decision by (certified) mail upon Gary J. Hearn

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Gary J. Hearn  
193 Menands Road  
Loudonville, New York 12211

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)~~  
~~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 April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GARY J. HEARN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1968 through 1973.

State of New York  
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that  
he is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 14th day of April , 1977, he served the within  
Notice of Decision by (certified) mail upon James M. Reilly, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
James M. Reilly, Esq.  
as follows: Pattison, Herzog, Sampson & Nichols, P.C.  
11 North Pearl Street  
Albany, New York 12207

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 April , 1977.

Bruce Batchelor

Janet Nash



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

April 14, 1977

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

Mr. Gary J. Hearn  
193 Menands Road  
Loudenville, New York 12111

Dear Mr. Hearn:

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

Please take further notice that pursuant to  
Section(8) **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,

**Paul E. Coburn**  
**Supervising Tax**  
**Hearing Officer**

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	:	
GARY. J. HEARN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968 through 1973.	:	

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Petitioner, Gary J. Hearn, 193 Menands Road, Loudonville, New York 12211, 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 1968 through 1973.

(File Nos. 0012113 and 0012114)

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York on September 8, 1976 at 9:15 a.m. Petitioner appeared by Pattison, Herzog, Sampson & Nicols, P.C. (James M. Reilly, Esq. of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Michael Weinstein, Esq. of counsel).

ISSUE

Whether the activities of the petitioner, Gary J. Hearn, as a branch manager of Kelly Girl Service, Inc. during the years 1968 through 1973, constituted the conduct of an unincorporated business.

FINDINGS OF FACT

1. On April 11, 1975, the Income Tax Bureau issued statements of audit changes against the petitioner, imposing unincorporated business tax upon his income during the years 1968 through 1973, on the grounds that his business activities constituted the carrying on of an unincorporated business and the income derived was subject to the unincorporated business tax. Accordingly, the Income Tax Bureau issued notices of deficiency in the sum of \$6,343.99, plus interest of \$1,182.72, for a total due of \$7,526.71.

2. Petitioner, Gary J. Hearn, and his wife filed New York State income tax resident returns for the years 1968 through 1973. He did not file New York State unincorporated business tax returns for said years.

3. On October 23, 1961, petitioner, Gary J. Hearn, entered into a contract with Kelly Girl Services, Inc. of

Michigan to operate a branch in Latham, New York. The Kelly Girl service provides temporary employees to industry, government and professional offices. Standards for employees and rates charged are set by the corporation. Some contracts with large national concerns such as General Electric are written by the corporation, and employees are supplied within the districts by the local offices of Kelly Girl Services, Inc.

4. Petitioner, Gary J. Hearn, known under his contract as a contract manager, was paid on a commission basis from the monthly gross receipts of monies received by the firm in Detroit, which bills customers directly. No deductions from the commissions were taken for social security, State or Federal taxes, disability or for any pension. His contract with the firm could be cancelled upon cause.

5. Petitioner, Gary J. Hearn, hired and paid for his own help for the office, namely, two supervisors and a receptionist. He paid the rent and telephone bill, and also owned the office equipment. He developed his business, called on customers, developed mailing lists and attempted to collect on past due accounts, as well as recruit the temporary help. Car expenses were his responsibility and were included in deductions taken on Schedule "c" of his Federal tax return.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Gary J. Hearn, as a contract manager for Kelly Girl Services, Inc. during the years 1968 through 1973, constituted income from his regular business of operating a temporary employee employment agency, 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, Gary J. Hearn, during the years 1968 to 1973, 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. Petition of Gary J. Hearn May 3, 1972, affirmed in Hearn v. Gallman, 364 NYS 2d 816.

C. That the petition of Gary J. Hearn is denied and the notices of deficiency issued April 11, 1975 are sustained.

DATED: Albany, New York  
April 14, 1977

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER