

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ANDRE HEINO

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) ~~on Period(x)~~ :
1965, 1966 and 1967.

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 27th day of April , 1977, he served the within
Notice of Decision by (certified) mail upon Andre Heino
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:
Mr. Andre Heino
5612 Twelfth Avenue
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

27th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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~~she~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 27th day of April , 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Melvin Myer

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

Mr. Melvin Myer
290 Madison Avenue
New York, New York

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.

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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

April 27, 1977

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

Mr. Andre Heino
5612 Twelfth Avenue
Brooklyn, New York 11219

Dear Mr. Heino:

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

Please take further notice that pursuant to
Section(§) **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

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on September 23, 1976 at 2:45 P.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Melvin Myer. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Whether the petitioner, Andre Heino's business activities as a mutual funds salesman constitute the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Andre Heino, filed New York State combined income tax returns with his wife for the years 1965, 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On January 29, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Andre Heino, imposing unincorporated business tax upon the income he received from his activities as a mutual funds salesman during the years 1965, 1966 and 1967. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$906.02.

3. During the years 1965, 1966 and 1967, petitioner, Andre Heino, was a commission salesman of mutual funds receiving at least 93% of his commissions from the Investors Planning Corporation of America; the remaining portion of his commissions were received from other companies.

4. During the years 1965, 1966 and 1967 the firms for whom petitioner, Andre Heino, sold for did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. He deducted expenses incurred in connection with his sales activities on schedule "C" of his Federal income tax return.

5. During the years 1965, 1966 and 1967, the Investors Planning Corporation of America provided petitioner, Andre Heino, with all his leads as to prospective clients. In addition,

petitioner was required to conduct his affairs primarily from the offices of said corporation, all correspondence was required to go through the office of said corporation, clerical and secretarial assistance was provided by said corporation and all records of the mutual fund investments sold by him were maintained by said corporation.

6. No evidence was presented to indicate the extent, if any, of the supervision and control exerted on petitioner, Andre Heino's time, sales activities or techniques, other than those previously stated in reference to his office activities.

CONCLUSIONS OF LAW

A. That petitioner, Andre Heino, failed to sustain the burden of proof necessary to establish that the income he received during the years 1965, 1966 and 1967 as a mutual funds salesman was compensation received 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 activities of petitioner, Andre Heino; during the years 1965, 1966 and 1967 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 Andre Heino is denied and the Notice of Deficiency issued on January 29, 1973 is sustained.

DATED: Albany, New York
April 27, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 250 SMALL CLAIMS

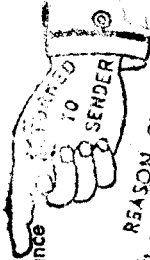
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



REASON CHECKED

Unclaimed ☒ Refused ☐
Addressee unknown ☐
Insufficient Address ☐
No such street ☐
No such office in street ☐
Do not re-mail in this envelope ☐

RETURN NOTICE

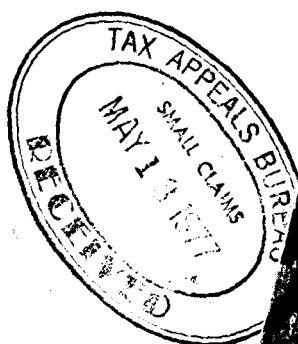
Mr. Andre Heino
5612 Twelfth Avenue
Brooklyn, New York 11219

CERTIFIED

No. 402087

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