

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PATRICK P. HOADE

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) ~~XXXXXXX~~ 1967, :
1968, 1969 and 1970.

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 3rd day of October, 1977, she served the within
Notice of Decision by (certified) mail upon Patrick P. Hoade

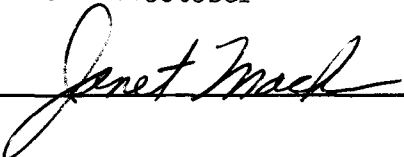
~~Representative of~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Patrick P. Hoade
66 Elder Drive
Commack, New York 11725

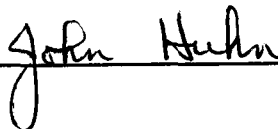
and by depositing same enclosed in a postpaid, properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~Representative~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXXX~~ petitioner.

Sworn to before me this

3rd day of October, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
PATRICK P. HOADE

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(s) ~~XXX Period(s)~~ 1967, :
1968, 1969 and 1970.

State of New York
County of Albany

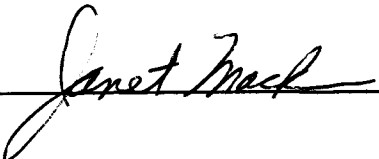
John Huhn , being duly sworn, deposes and says that
~~She~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 3rd day of October , 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Michael M. Enzer,
CPA (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Michael M. Enzer, CPA
36 West 44th Street
New York, New York

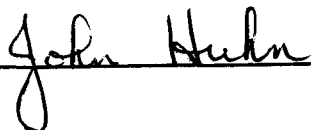
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

3rd day of October , 1977.







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

October 3, 1977

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

Mr. Patrick P. Hoade
66 Elder Drive
Commack, New York 11725

Dear Mr. Hoade:

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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
PATRICK P. HOADE : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Years 1967, :
1968, 1969 and 1970. :
:

Petitioner, Patrick P. Hoade, residing at 66 Elder Drive, Commack, New York 11725, 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 1967, 1968, 1969 and 1970 (File No. 00296).

A small claims hearing was held before Joseph A. Milack, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 23, 1977 at 10:45 A.M. The petitioner appeared by Michael M. Enzer, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irving Atkins, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a sales representative during the years 1967, 1968, 1969 and 1970 was subject to unincorporated business tax.

FINDINGS OF FACT

1. During each of the years 1967, 1968, 1969 and 1970, petitioner was a sales representative who represented more than one principal. He was paid by his principals on a commission basis. The majority of his commission income was received from the Dixon Corporation.

2. On November 26, 1973, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Patrick P. Hoade, for the years 1967, 1968, 1969 and 1970 in the sum of \$2,086.16, on the grounds that the income he received from his activities as a sales representative during said years was subject to the unincorporated business tax.

3. Although petitioner was required to meet sales quotas, have sales approved by Dixon Corporation and attend occasional sales meetings, none of the principals he represented exercised any substantial supervision or control over his sales activities.

4. The Dixon Corporation supplied petitioner with calling cards, furnished him with leads to individual accounts or to a particular industry and, occasionally, provided him with supervisory personnel to assist on certain sales calls.

5. There was no arrangement as to division of time and effort between petitioner and his principals.

6. Petitioner was free to work for or represent principals other than those he represented.

7. Petitioner's principals did not deduct Federal and New York State withholding taxes or social security taxes from his commission income.

8. Petitioner used the business name of Robert-Emmett Associates on his business letterhead, on which he listed his home address as his business address. He maintained an office in his home.

9. Petitioner's principals did not reimburse him for the expenses he incurred in connection with his sales activities. He reported his commission income and related expenses on Federal schedules "C" for the years in question.

CONCLUSIONS OF LAW

A. That the petitioner's activities during the years 1967, 1968, 1969 and 1970 constituted the carrying on of an unincorporated business as an independent contractor and did not constitute services as an employee within the meaning and intent of section 703(b) of the Tax Law. Therefore, the income derived from petitioner's activities during said years was subject to the unincorporated business tax.

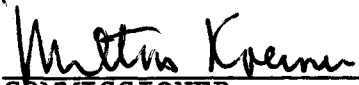
B. That the petition of Patrick P. Hoade is denied and the Notice of Deficiency issued on November 26, 1973 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

October 3, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER