

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK JOFFE

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)~~ :
1968, 1969, 1970, 1971 & 1972

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 15 day of July, 1977, she served the within
NOTICE OF DECISION by (certified) mail upon Jack Joffe

~~representative of~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Jack Joffe
36 East 36th Street
New York, New York 10016
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~~
~~xxxxxx~~ 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

15 day of July, 19 77

Marsina Donnini

Janet M. [Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

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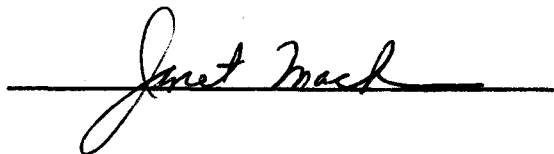
State of New York
County of Albany

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 15 day of July, 1977, she served the within NOTICE OF DECISION by (certified) mail upon Martin V. Levenson, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Martin J. Levenson, Esq.
535 5th Avenue
New York, New York 10017
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

15 day of July, 1977.







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

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

July 15, 1977

Mr. Jack Joffe
36 East 36th Street
New York, New York 10016

Dear Mr. Joffe:

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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JACK JOFFE	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1968, 1969, 1970, 1971 and 1972.	:	

Petitioner, Jack Joffe, residing at 36 East 36th Street, New York, New York 10016, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968, 1969, 1970, 1971 and 1972. (File No. 11530).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on September 14, 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 Martin V. Levenson, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (A. Schwartz, Esq., of counsel).

ISSUE

Whether the income derived from the petitioner's activities as a salesman is subject to the unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The petitioner, Jack Joffe, was retained by Excellence Import and Export, Inc. as a salesman in 1965.

2. Compensation received by the petitioner was strictly on a commission basis with no withholding of payroll taxes and no reimbursement of business expenses.

3. The petitioner paid self-employment taxes and contributed to a self-employed retirement plan (Keogh Plan).

4. Although Excellence Import and Export, Inc. regarded the petitioner as an independent salesman, he was covered under their workmen's compensation policy, he occasionally made their deliveries, collected their past due accounts, and conducted his selling activities from their showroom. However, no direction and control over his time and effort was shown or exercised by Excellence Import and Export, Inc.

5. Although Excellence Import and Export, Inc. discouraged the petitioner from representing other firms, the petitioner conducted a referral service on a commission basis, whereby he would introduce buyers to other firms that carried non-competing lines. This referral service was conducted without the approval and knowledge of Excellence Import and Export, Inc.

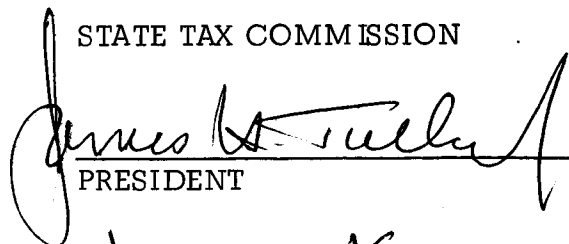
6. The petitioner's referral and selling activities were normally performed simultaneously, without any division of time and effort.

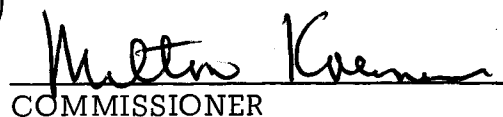
7. That the petitioner's referral and selling activities constitute the carrying on of an unincorporated business of which the income derived therefrom is subject to the unincorporated business tax within the meaning and intent of section 703 of the Tax Law.

8. The petition of Jack Joffe is denied and the notices of deficiency issued November 24, 1975 for \$3,675.12 and for \$4,533.31, are sustained, together with additional interest as may be lawfully owing.

DATED: Albany, New York
July 15, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER