

STATE OF NEW YORK .
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD KAPLAN

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 ~~(x) or Period (x)~~ 1970.:

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~she~~ he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 18th day of January , 1977, ~~she~~ he served the within
Notice of Decision by (certified) mail upon Harold Kaplan

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Harold Kaplan
685 Craft Avenue
Franklin Square, New York 11010

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

18th day of January , 1977.

Bruce Batchelor

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

January 18, 1977

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

Mr. Harold Kaplan
685 Craft Avenue
Franklin Square, New York 11010

Dear Mr. Kaplan:

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
Supervisor of Small
Claims Hearings

Enc.

cc: ~~Mr. Harold Kaplan~~

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

HAROLD KAPLAN :

DECISION

for Redetermination of a Deficiency or:
for Refund of Unincorporated Business
Taxes under Article 23 of the Tax Law :
for the Year 1970.

:

Petitioner, Harold Kaplan, residing at 685 Craft Avenue, Franklin Square, New York 11010, have filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1970. (File No. 0-52009007).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on June 6, 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 pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Al Schwartz, Esq., of counsel).

ISSUE

Whether the petitioner's salary income should be included as part of his unincorporated business income and therefore, subject to the New York State unincorporated business tax.

FINDINGS OF FACT

1. Petitioner filed a 1970 New York State income tax resident return, reporting \$10,422.40 in salary income from Gilbreth International Corporation, and \$10,239.37 in net profit from his unincorporated business activities as a manufacturer's representative.

2. A 1970 New York State unincorporated business tax return was filed by the petitioner for his activities as a manufacturer's representative.

3. Upon audit, the Income Tax Bureau issued a Notice of Deficiency, including the petitioner's salary income as part of his unincorporated business income.

4. During 1969, and during 11 months of 1970, the petitioner was a full-time employee of Gilbreth International Corporation. Petitioner asserted that he was employed as their Sales Manager on a salary basis.

5. Gilbreth International Corporation is in the business of manufacturing and distributing vinyl shrink bands for the pharmaceutical and cosmetic industries.

6. During 1970, in anticipation of severing his relationship with Gilbreth International Corporation, the petitioner started and operated his own unincorporated business as a manufacturer's representative and distributor of products in the field of plastic packaging.

7. The petitioner's unincorporated business activities were conducted without the knowledge of Gilbreth International Corporation, who restricted the petitioner from representing other firms.

8. Petitioner was not reimbursed for his expenses and there were no payroll taxes withheld from his compensation received from Gilbreth International Corporation.

9. Petitioner was required to account and report to the corporation the nature and status of his activities. He hired and supervised other salesmen on their behalf. He was frequently required to submit written reports about individual clients and for salesmen. He was always directed as to which clients to visit and when.

10. The services relating to his unincorporated business were primarily performed during the petitioner's own time. Occasionally he would utilize the corporation's time for his own business activities, however, his fear of being discovered kept this practice at a bare minimum.

11. The clients serviced in his capacity as a sales manager for the corporation were totally different from the clients serviced in his capacity as a manufacturer's representative.

CONCLUSIONS OF LAW

A. That sufficient direction and control were exercised by the Gilbreth International Corporation to result in an employer-employee relationship.

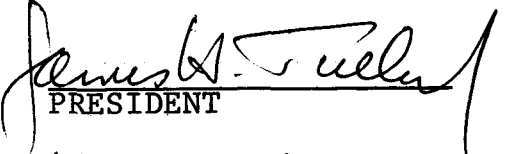
B. That the petitioner's services as an employee were not performed in furtherance of or for the direct benefit of his unincorporated business activities.

C. That the petitioner's services as an employee were not part of his unincorporated business, within the meaning and intent of section 703(b) of Article 23 of the Tax Law.

D. That the petition of Harold Kaplan is granted and the Notice of Deficiency issued July 30, 1973 is cancelled.

DATED: Albany, New York
January 18, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER