

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MILTON MAWBEY

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)~~ :
1970, 1971 & 1972.

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 4th day of March, 1977, ~~she~~ he served the within
Notice of Decision by (certified) mail upon Milton Mawbey

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

Mr. Milton Mawbey
53 Orchard Farm Road
Port Washington, New York 11050

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

4th day of March, 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MILTON MAWBEY

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) ~~xxx Period(x)~~ :
1970, 1971 & 1972.

AFFIDAVIT OF MAILING

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 4th day of March, 1977, she served the within
Notice of Decision by (certified) mail upon Anthony Finazzo &
Domenic J. Imbese (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Anthony Finazzo & Domenic J. Imbese, CPA's
Wolf and Company
215 Main Street
Port Washington, New York 11050
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

4th day of March, 19 77

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

March 4, 1977

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

Mr. Milton Mawbey
53 Orchard Farm Road
Port Washington, New York 11050

Dear Mr. Mawbey:

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 OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Milton Mawbey, residing at 53 Orchard Farm Road, Port Washington, New York 11050, 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 1970, 1971 and 1972 (File No. 2-25771269).

A small claims hearing was held October 27, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Harry Huebsch, Hearing Officer. Petitioner, Milton Mawbey, appeared by Anthony Finazzo, C.P.A. and Domenic J. Imbese, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq., (Paul Rosenkranz, Esq., of counsel).

ISSUE

Did petitioner, Milton Mawbey's selling activities during the years 1970, 1971 and 1972 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Milton Mawbey, filed New York State personal income tax returns for 1970, 1971 and 1972. He reported business income as a "sales agent" for each of these years. Petitioner, Milton Mawbey,

did not file unincorporated business tax returns for said years. The Income Tax Bureau held that petitioner, Milton Mawbey, was self-employed and that the income resulting from his sales activities was subject to unincorporated business tax. A Notice of Deficiency for 1970, 1971 and 1972, dated September 29, 1975 was issued in the amount of \$4,325.21 unincorporated business tax due, plus \$942.36 interest for a total sum of \$5,267.57.

2. During the years 1970, 1971 and 1972, petitioner, Milton Mawbey, was a commission salesman for six unaffiliated sporting clothes and equipment firms. He sold the related but non-competing products of all principals to the same customers. There was no agreement as to division of petitioner, Milton Mawbey's time between the principals nor was he supplied his own desk or office space by any principal.

3. Petitioner, Milton Mawbey, was not issued a wage and tax statement by any of these employers. No deductions were made from his compensation. He was not reimbursed for business expenses by his employers and he deducted these expenses on schedule C of his Federal income tax return. The business expenses included rent, telephone and office supplies.

4. Petitioner, Milton Mawbey, financed his own retirement plan. He had his own letterhead on which he indicated that he was a manufacturer's representative.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Milton Mawbey, from the firms he represented during the years 1970, 1971 and 1972 constituted income from his regular business of selling sporting clothes and

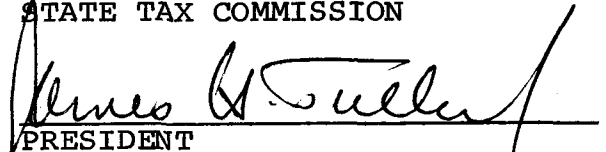
equipment and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Milton Mawbey, during the years 1970, 1971 and 1972 constituted the carrying on of an unincorporated business, and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703(a) of the Tax Law.

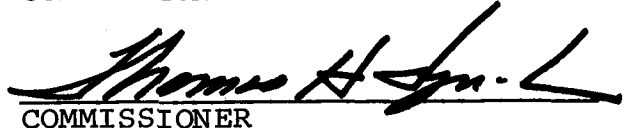
C. That the petition of Milton Mawbey is denied and the Notice of Deficiency dated September 29, 1975 is sustained.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER