

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DANIEL PHILLIPS

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) :
1969 & 1970

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 Daniel Phillips

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Daniel Phillips
221 West 82nd Street
New York, New York 10024

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

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DANIEL PHILLIPS

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)~~ :
1969 and 1970

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 Seymour Wissner, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Seymour Wissner, CPA
Herman J. Dobkin & Co.
488 Madison Avenue
New York, New York 10022
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.

Marsina Donnini

Janet Mack



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. Daniel Phillips
221 West 82nd Street
New York, New York 10024

Dear Mr. Phillips:

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	:	
DANIEL PHILLIPS	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1969 and 1970.	:	

Petitioner, Daniel Phillips, residing at 221 West 82nd Street, New York, New York 10024, 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 1969 and 1970. (File No. 12309).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on October 27, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Seymour Wissner, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the income received by petitioner, Daniel Phillips, during the years 1969 and 1970 from his activities as a sales representative is subject to the unincorporated business tax or is he an employee exempt from the unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The petitioner, Daniel Phillips, was a salesman for the Lafayette Electric Corporation. He did not represent any other firm during the years 1969 and 1970. During said years petitioner received commission income from Lafayette Electric Corporation in the amount of \$15,591.72 and \$17,662.20, respectively.

2. Petitioner spent three or four hours per day for approximately four days a week as a salesman in the lamp department of said firm. In addition to these selling activities, he designed and ordered printing of matters such as bulletins and flyers, set up systems for the company to keep visual records of lamp department account transactions and regularly made bank deposits for the firm, in some instances endorsing payroll checks when picking up the company's payroll.

3. He was supplied with an office and received a monthly allowance of \$150.00 for business expenses incurred by him. He was assigned a specific territory and was under the supervision of the department manager.

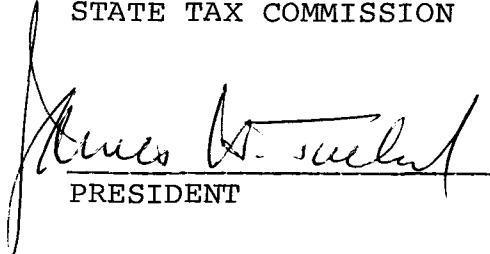
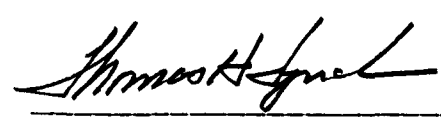
4. During the years 1969 and 1970, petitioner, Daniel Phillips, paid his own self-employment taxes and was not covered under any employee-related plans. Petitioner contended that because of a mutual desire to free him from union membership requirements, he was not considered an employee.

5. That sufficient direction and control was exercised by Lafayette Electric Corporation to create an employer-employee relationship and that petitioner's income from his selling activities is not subject to the unincorporated business tax in accordance with the meaning and intent of section 703 (b) of the Tax Law.

6. The petition of Daniel Phillips is granted and the Notice of Deficiency in the sum of \$1,435.60 issued on March 31, 1975 is cancelled.

DATED: Albany, New York
July 15, 1977

STATE TAX COMMISSION


PRESIDENT
COMMISSIONER
COMMISSIONER