

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT RUBIN

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 Lester D. Janoff, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Lester D. Janoff, Esq.
565 Fifth Avenue
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

15 day of July, 1977.

Marsina L. Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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ALBERT RUBIN

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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 Albert Rubin (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Albert Rubin
72 Knollwood Road, W.
Roslyn, New York 11576
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~~) (~~representative of~~) petitioner herein and that the address set forth on said wrapper is the last known address of the (~~representative of~~) petitioner.

Sworn to before me this

15 day of July, 1977.

Marsina L. Donnini

Janet Macch



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

Albert Rubin
72 Knollwood Road, W.
Roslyn, New York 11576

Dear Mr. Rubin:

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	:	
	:	
ALBERT RUBIN	:	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, Albert Rubin, residing at 72 Knollwood Road West, Roslyn, New York 11576, 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. 13390)

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on October 20, 1976 at 1:15 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Lester D. Janoff, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, 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. Petitioner, Albert Rubin, was a salesman on a commission basis for Bakan Plastics and Cook Chemical Company during the years 1969 and 1970. Both these firms are divisions of Realex Corporation, and are located at 2500 Summit, Kansas City, Missouri.

2. Although he did not maintain regular office facilities at home, his base of operations, and his business records, were located at his New York home. In addition, petitioner had an answering service at 509 Fifth Avenue in New York City, where he also received correspondence.

3. Petitioner contacted Bakan Plastics on a daily basis and submitted weekly reports on his activities.

4. All orders were shipped and billed by Bakan Plastics and/or Cook Chemical Company. He was supplied with price quotations, sales forms, catalogs and samples. Although the petitioner was labeled as their eastern regional sales manager, his duties were to solicit and service accounts within his assigned territory.

5. Petitioner also sold on a commission basis, a non-competitive line of merchandise for U.S. Cap and Closure during the years 1969 and 1970. These selling activities were performed in conjunction with the selling activities performed for Bakan Plastics.

6. Although the petitioner devoted the majority of his time and effort to Bakan Plastics, a clear division of time and effort between Bakan Plastics and U.S. Cap and Closure was not shown.

7. Petitioner's commission income from Bakan Plastics was \$23,787.49 in 1969 and \$19,830.71 in 1970. His commission income from U.S. Cap and Closure was \$8,821.30 in 1969 and \$15,827.26 in 1970. Petitioner reported his commission income on Federal schedule "C" for the year 1969 and listed the name of his business as "A. Rubin Associates" on said schedule. Although no copy of schedule "C" was introduced into evidence with respect to the year 1970, schedule "A" on petitioner's New York State income tax return for said year showed business income of \$25,762.72. No withholding of payroll taxes was made from the commission income earned by the petitioner from any of the principals he represented.

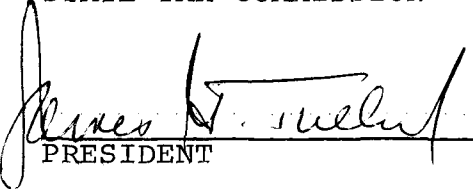
8. That the commission income received by petitioner, Albert Rubin, during the years 1969 and 1970 constituted income from his regular business of selling and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

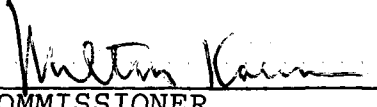
9. That the petition of Albert Rubin is denied and the Notice of Deficiency issued June 26, 1972 in the amount of

\$1,745.05 is sustained together with such additional interest
as may be lawfully owing.

DATED: Albany, New York
July 15, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER