

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARTIN RUDY

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) ~~on Period(s)~~ 1968; :
1969, 1970, 1971, 1972 and 1973.

State of New York
County of Albany

Bruce Batchelor , 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 4th day of March , 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Martin Rudy
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Martin Rudy
209-15 18th Avenue
Bayside, New York 11360
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

Just Wick

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARTIN RUDY

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 and 1973.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
xhe is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of March , 1977, xhe served the within
Notice of Decision by (certified) mail upon Arthur B. Kurtz, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Arthur B. Kurtz, Esq.
475 Fifth Avenue
New York, NY 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

4th day of March , 1977.

Bruce Batchelor

Just [Signature]



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. Martin Rudy
209-15 18th Avenue
Bayside, New York 11360

Dear Mr. Rudy:

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: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

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,
1972 and 1973.

Petitioner, Martin Rudy, residing at 209-15 18th Avenue, Bayside, New York 11360, has filed petitions for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969, 1970, 1971, 1972 and 1973. (File No.'s 0-56875265 and 3-45709009).

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on October 20, 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 Arthur B. Kurtz, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Whether the selling activities of petitioner, Martin Rudy, during the years 1968, 1969, 1970, 1971, 1972 and 1973 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Martin Rudy, and his wife filed New York State resident income tax returns for the years 1968 through 1973. He did not file New York State unincorporated business tax returns for said years.

2. On September 30, 1974 and June 30, 1975, the Income Tax Bureau issued Statements of Audit Changes against petitioner, Martin Rudy. The statement issued September 30, 1974 covered the years 1968, 1969 and 1970, and the statement issued June 30, 1975, covered the period 1971, 1972 and 1973. Both statements imposed unincorporated business tax upon the income received by him for the respective years. The statement dated June 30, 1975, also included a modification adjustment which has not been contested by petitioner. In accordance with aforesaid Statements of Audit Changes, the Income Tax Bureau issued two Notices of Deficiency. One notice was dated September 30, 1974 in sum of \$2,187.77, and the other was dated June 30, 1975, in the sum of \$1,578.56.

3. Petitioner, Martin Rudy, was a handbag salesman during the years 1968 through 1973. He represented several firms in the sale of handbags, traveling approximately sixteen weeks of each year in states other than New York. The products sold by him for each firm were noncompetitive. He sometimes sold the products of more than one of his principals to the same customers. He did not have any employees. He worked out of the showrooms of firms he represented.

4. During the years 1968 through 1973 the firms for whom petitioner, Martin Rudy, sold handbags did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him. He was not reimbursed for any of his expenses. He deducted these expenses on Schedule "C" of his Federal income tax returns. He did not have any written employment contracts and was not covered by any of these firms under any employee-related programs. He belonged to a "Keogh Plan" for two or three of the years involved. He was free to work for other principals as long as their lines were not competitive. The firms for which he sold merchandise did not exercise any substantial supervision and control over his sales activities or techniques.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Martin Rudy, from the principals he represented during the years 1968 through 1973 constituted income from his regular business of selling handbags and was 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, Martin Rudy, during the years 1968 through 1973 constituted the carrying on of

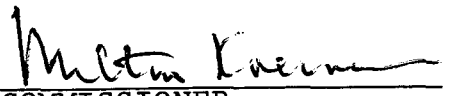
an unincorporated business, and his income derived therefrom is subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.


C. That the petitions of Martin Rudy are denied and the Notices of Deficiency issued September 30, 1974 and June 30, 1975, are sustained.

DATED: Albany, New York
March 4, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER