

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MATHEW C. SMITH

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)~~ 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 12th day of May , 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Mathew C. Smith

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Mathew C. Smith
2047 Lawry Lane
Merrick, New York 11566

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

12th day of May , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MATHEW C. SMITH

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) ~~1968~~ 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 12th day of May, 1977, she served the within
Notice of Decision by (certified) mail upon Jeffrey D. Green

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

Mr. Jeffrey D. Green
11 Harness Road
New City, New York 10956

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

12th day of May, 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

May 12, 1977

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

Mr. Mathew C. Smith
2047 Lawry Lane
Merrick, New York 11566

Dear Mr. Smith:

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 | : | |
| MATHEW C. SMITH | : | DECISION |
| for Redetermination of 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, Mathew C. Smith, 2047 Lawry Lane, Merrick, New York, filed a petition for redetermination of 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. (File No.'s 3-30617907 and 0-54490303).

A small claims hearing was held before Joseph Chyrywat, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1976, at 9:15 A.M. Petitioner appeared with his accountant, Mr. Jeffery Green. The Income Tax Bureau appeared by Peter Crotty, Esq., (Paul Rosenkranz, Esq. of counsel).

ISSUE

Was the income derived from the petitioner, Mathew C. Smith's activities as a sales representative subject to the unincorporated business tax imposed under Article 23 of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Mathew C. Smith and his wife, Theresa, filed New York State income tax resident returns for the years 1968 through 1973. He did not file unincorporated business tax returns for these years.

2. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, Mathew C. Smith, imposing unincorporated business taxes in the sum of \$1,441.00 upon the income he received during the years 1968, 1969 and 1970. It also imposed a penalty pursuant to section 685(a) of the Tax Law in the sum of \$582.41. On September 29, 1975, the Income Tax Bureau issued a second Notice of Deficiency against the petitioner imposing an unincorporated business tax in the sum of \$1,465.95 for the years 1971, 1972 and 1973.

3. During the years in issue, petitioner, Mathew C. Smith, was a sales representative engaged in the selling of juvenile furniture. He represented from three to seven companies during each of the years, however, he received a major portion of his income, (between 80 and 90 percent), from Pride Trimble Corp. He sold to only those customers who carried the Pride Trimble line and the items sold by him for each firm were non-competitive.

4. Petitioner, Mathew C. Smith's activities as a sales representative consisted of making sales to customers in the New York Metropolitan area. He contacted customers that were assigned to him by the Pride Trimble Corp. as well as contacting and developing new accounts

for Pride Trimble. After initially contacting customers in behalf of Pride Trimble Corp., he then sold the products of his other principals. He used his own discretion as to the division of time and the sales techniques used to consummate sales for his various principals.

5. Petitioner, Mathew C. Smith, was responsible for manning the New York City showroom for Pride Trimble Corp. every Friday and during market times, which occurred two weeks a year. He was also required to attend sales meetings for Pride Trimble Corp. at either their New York City or North Carolina location.

6. Petitioner, Mathew C. Smith's principals, did not provide him with any office space. He did maintain an office in his home and claimed the expense for this office as well as expenses for entertainment, telephone and automobile on Schedule C of the Federal Income Tax Form 1040.

7. Petitioner, Mathew C. Smith, was paid by the firms he represented on a commission basis. These firms did not withhold any payroll taxes from commissions paid to him. He was not a member of any of the firms pension plans. He was not reimbursed for expenses incurred by him in the performance of his sales activities. Pride Trimble Corp. did reimburse him for travel expenses incurred while attending required sales meetings.

8. Petitioner, Mathew C. Smith, was advised by his accountant that he was not required to file unincorporated business tax returns for the years in issue.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Mathew C. Smith, from firms he represented during the years 1968 through 1973 constituted income from his regular course of business 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, Mathew C. Smith, during the years 1968 through 1973, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

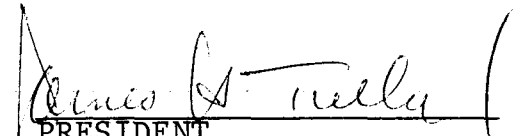
C. That the petitioner, Mathew C. Smith, had reasonable cause for not filing unincorporated business tax returns for the years 1968 through 1973 and; therefore, the penalties assessed for the year 1968, pursuant to section 685(a) of the Tax Law; and the years 1969 and 1970, pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are waived.

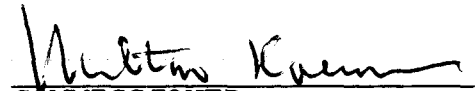
D. That the petition of Mathew C. Smith is granted to the extend of cancelling the penalties imposed pursuant to section 685(a) of the Tax Law for the year 1968, and 685(a)(1) and (2) of the Tax Law for the years 1969 and 1970; that the Income Tax Bureau is

hereby directed to accordingly modify the Notice of Deficiency issued March 31, 1975; and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
May 12, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER