

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Russell Stringham

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of unincorporated business tax :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) or Period(s) :
1968 through 1973 ~~XXXXXXXXXXXX~~

State of New York
County of Albany

John Huhn, 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 7th day of December, 1977, she served the within
notice of decision by (certified) mail upon Russell Stringham


~~(Representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Russell Stringham
6 Gramercy Place
Huntington, NY 11743

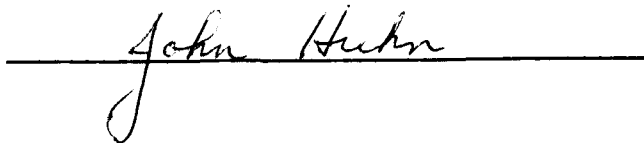
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~(representative of the)~~
~~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

7th day of December, 1977.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Russell Stringham

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Uncorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) 1968 through 1973 :
~~XXX Period(s)~~

State of New York
County of Albany

John Huhn, 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 7th day of December, 1977, he served the within
notice of decision by (certified) mail upon Robert G. Del Gadio

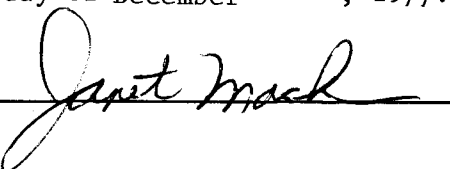
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert G. Del Gadio
114 Old Country Road
Mineola, NY 11501

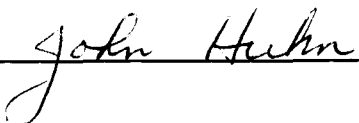
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Postal Service within the State of New York.

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

7th day of December, 1977.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

December 7, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

**Russell Stringham
6 Gramercy Place
Huntington, NY 11743**

Dear Mr. Stringham:

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 **(g) 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,

**John J. Sollecito
Director**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
RUSSELL STRINGHAM	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968 through 1973.	:	

The petitioner, Russell Stringham, 6 Gramercy Place, Huntington, New York 11743, filed a petition for redetermination of a deficiency 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. 00539).

A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 14, 1976 at 2:45 P.M. Petitioner appeared by Robert G. Del Gadio, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss and Richard M. Kaufman, Esqs., of counsel)

ISSUE

Whether the sales activity of the petitioner during the period in question constituted the carrying on of an unincorporated business subject to tax under Article 23 of the Tax Law.

FINDINGS OF FACT

1. On August 27, 1973, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, Russell Stringham, in the sum of \$2,520.79 for the years 1968, 1969 and 1970. On February 24, 1975, the Income Tax Bureau issued another Notice of Deficiency in the sum of \$5,904.73 for the years 1971, 1972 and 1973. These notices of deficiency were issued on the grounds that the activities of the petitioner constituted the carrying on of an unincorporated business and that his income from said business was subject to unincorporated business tax under Article 23 of the Tax Law.

2. The petitioner timely filed a Petition for Redetermination of a Deficiency or for Refund of Personal Income or Unincorporated Business Tax in response to each of the aforementioned notices.

3. During the years at issue, the petitioner was a salesman of components used in refrigeration and air-conditioning equipment. He represented three different principals. The products of each of these companies complimented each other and were noncompetitive. The petitioner was forbidden from selling the products of other companies, and was allowed to make sales only to companies approved by his principals. The petitioner was limited to operating within a set geographic area. The principals represented by the petitioner contacted companies within the petitioner's territory as a means of supervising the petitioner's job performance. If the petitioner's job performance was unsatisfactory, the principals could terminate the petitioner's status as their representative.

4. The petitioner contended that he was required to devote 40 hours a week to sales solicitations on behalf of his three principals and to allocate, as nearly as possible, an equal amount of time to each principal.

5. The petitioner was not reimbursed by his principals for the expenses he incurred in connection with his sales activities. During the years at issue, he claimed deductions on his Federal and New York State income tax returns for the expenses incurred in representing his principals. The petitioner maintained desk space, literature space, filing cabinets, a typewriter and a telephone extension at his home, all of which were utilized for business purposes and for which he claimed deductions on his Federal and New York State income tax returns. The petitioner also maintained a telephone answering service during the years at issue and claimed deductions for the cost of this service.

6. During the years at issue, the petitioner contributed to a retirement plan for the self-employed (so-called "Keogh" plan) and also paid a self-employment tax. He was paid a straight commission from which no deductions were taken nor taxes withheld. The petitioner was not covered by his principals for any employee benefit programs.

7. The petitioner determined his own work schedule and was free to solicit customers on his own. He contacted his principals by phone two or three times a week, and visited them in person three or four times a year.

CONCLUSIONS OF LAW

A. That the principals which the petitioner represented during the years at issue, exercised a minimal degree of direction and control over his sales activities. Said sales activities were primarily conducted by him according to his own discretion.

B. That the petitioner was an independent contractor and not an employee within the meaning and intent of section 703(b) of the Tax Law.

C. That the petitioner was engaged in the conduct of an unincorporated business subject to taxation under Article 23 of the Tax Law, for the years at issue.

D. That the petition of Russell Stringham is denied and the notices of deficiency issued August 27, 1973 and February 24, 1975 are sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York
December 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER