

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CARL MEYER

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 through 1972.

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 24th day of April, 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Carl Meyer
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Carl Meyer
188-04 64th Avenue
Flushing, New York 11365

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~~
~~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

24th day of April, 1978

[Signature]

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

CARL MEYER

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) ~~xxxxxx~~ of the :
1968 through 1972.

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 24th day of April, 1978, he served the within
Notice of Decision by (certified) mail upon Herbert Pflaster

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Herbert Pflaster, Esq.
225 West 34th Street, Room 1910
New York, New York 10001

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

24th day of April, 1978.

[Signature]

John Huhn



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

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

April 24, 1978

Mr. Carl Meyer
188-04 64th Avenue
Flushing, New York 11365

Dear Mr. Meyer:

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(§) **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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
CARL MEYER	:	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 1972.	:	

Petitioner, Carl Meyer, residing at 188-04 64th Avenue, Flushing, New York 11365, 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 through 1972 (File No. 14305).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 29, 1977 at 9:15 A.M. The petitioner appeared with Herbert Pflaster, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a salesman during the years 1968 through 1972 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Carl Meyer, filed New York State income tax returns for the years 1968, 1969, 1970, 1971 and 1972. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau issued notices of deficiency against the petitioner on the grounds that the income derived from his sales activities during the years 1968 through 1972 was subject to unincorporated business tax. It also made adjustments to petitioner's personal income tax liability for the years 1968, 1970, 1971 and 1972 which are not being contested. The Income Tax Bureau subsequently issued notices and demand for payment of tax due against petitioner in connection with the aforesaid notices of deficiency. Petitioner paid the amounts due on the notices and filed a claim for refund of unincorporated business tax for the years 1968 through 1972. Said claim was denied by the Income Tax Bureau on October 27, 1975, and subsequently, petitioner timely filed a petition to the State Tax Commission.

3. Petitioner is a traveling salesman for R. G. Barry Corp., a firm located in Ohio, with a sales office in New York, New York.

4. Petitioner was compensated on a commission basis and was not reimbursed for his business expenses.

5. During the years 1968 through 1971, petitioner was regarded by R. G. Barry Corp. as an independent contractor. His compensation was not subject to the withholding of payroll taxes and he did not participate in any employee-related programs. However, in 1972 the corporation withheld payroll taxes and listed the petitioner as an employee, but it did not include him in the firm's pension or profit-sharing plans.

6. Although R. G. Barry Corp. listed the petitioner as an employee in 1972, the business relationship between them remained unchanged. Petitioner was assigned a specific territory and was not allowed to represent other firms. He was required to periodically report to the office by telephone and/or by correspondence.

7. R. G. Barry Corp. did effect some supervision of petitioner's activities to insure that he was covering his territory and visiting its customers. However, said principal did not exercise any control over his sales endeavors, nor did they control or regulate the manner in which petitioner attempted to solicit business.

8. Salesmen for R. G. Barry Corp. were required to attend and participate in trade shows. The sales exhibits at the shows were organized and paid for by the sales representatives of said firms.

9. Petitioner filed Federal schedules "C" for the years 1968 through 1971 and paid self-employment taxes for said years. In addition, petitioner contributed to a self-employed retirement plan ("Keogh Plan") during the years 1968 through 1972.

CONCLUSIONS OF LAW

A. That R. G. Barry Corp. failed to exercise sufficient direction and control over the sales activities of petitioner, Carl Meyer, to result in an employer-employee relationship within the meaning and intent of section 703(b) of the Tax Law.

B. That petitioner's sales activities on behalf of R. G. Barry Corp. during the years 1968 through 1972, constituted the carrying on of an unincorporated business as an independent contractor within the meaning and intent of section 703(b) of the Tax Law, and that his income derived therefrom was subject to unincorporated business tax.

C. That the petition of Carl Meyer is denied and the Notice of Disallowance issued on October 27, 1975 is sustained.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER