

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MILTON ROTTER

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)~~ :
1967, 1968, 1969 and 1970.

State of New York
County of Albany

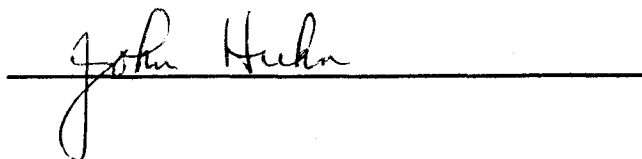
John Huhn, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August, 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Milton Rotter
~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Milton Rotter
677 Bruce Drive
East Meadow, New York 11554
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

25th day of August, 1978





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~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 25th day of August , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Mark B. Parker

(representative of) the petitioner in the within proceeding,

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

Mark B. Parker, Esq.
839 Shari Lane
East Meadow, New York 11554

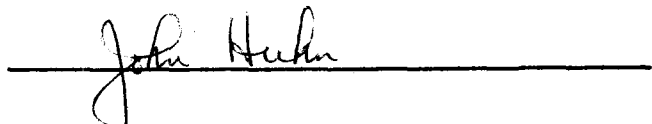
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last known address of the (representative of the) petitioner.

Sworn to before me this

25th day of August , 1978.







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

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

August 25, 1978

Mr. Milton Rotter
677 Bruce Drive
East Meadow, New York 11554

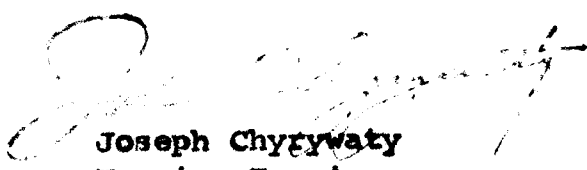
Dear Mr. Rotter:

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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE TAX COMMISSION

for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax
under Article 23 of the Tax Law for the :
Years 1967, 1968, 1969 and 1970.

Petitioner, Milton Rotter, 677 Bruce Drive, East Meadow, New York 11554, 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 1967, 1968, 1969 and 1970 (File No. 00322).

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 August 31, 1977 at 9:15 A.M. Petitioner appeared with Mark B. Parker, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether income derived from petitioner's activities as a salesman was subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Milton Rotter, filed New York State income tax returns for the years 1967, 1968, 1969, and 1970, whereon he reported net business income derived from his activities as a salesman. However, unincorporated business tax returns were not filed for these years.

2. On audit, the Income Tax Bureau issued a deficiency whereby the income derived from his activities as a salesman was held subject to unincorporated business tax.

3. During the period at issue petitioner, Milton Rotter, was a salesman for All-Luminum Products, Inc., a Pennsylvania corporation with offices in Philadelphia.

4. Although petitioner was required to attend occasional sales meetings in Philadelphia and to report on his daily sales by telephone, All-Luminum Products, Inc. did not exercise any control over his sales endeavors, nor did it control or regulate the manner in which he attempted to solicit business.

5. Petitioner asserted that although All-Luminum did not permit him to represent other firms, he did so without their knowledge or permission.

6. Petitioner sold for two other firms during the years 1967 through 1970, without exercising any clear division of his time and effort.

7. Petitioner was compensated by all his principals on a commission basis with no reimbursement of his business expenses and no withholding of his payroll taxes.

8. Petitioner filed Federal Schedule "C" and paid self-employment taxes during the years 1967 through 1970.

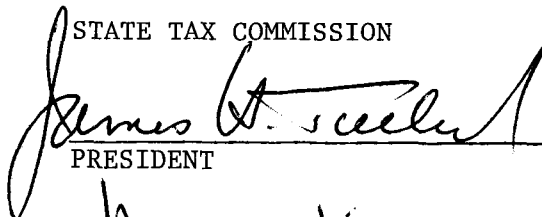
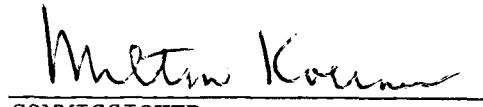
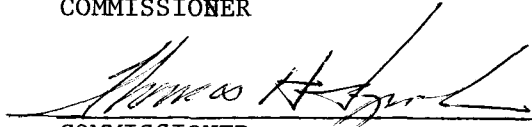
CONCLUSIONS OF LAW

A. That sufficient direction and control was not exercised over petitioner's activities by All-Luminum Products, Inc. or by the other two firms which petitioner represented, to result in an employee-employer relationship in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the income derived from petitioner's activities during the years 1967 through 1970 constituted income from his regular business of selling and was, therefore, subject to unincorporated business tax in accordance with the meaning and intent of sections 701 and 703 of the Tax Law.

C. That the petition of Milton Rotter is denied and the notices of deficiency issued March 26, 1973 and January 28, 1974 in the sums of \$2,863.04 and \$1,968.02, respectively, are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
August 25, 1978

STATE TAX COMMISSION

PRESIDENT

COMMISSIONER

COMMISSIONER