

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Ludwig Becker :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Unincorporated Business Tax :

under Article 23 of the Tax Law

for the Years 1966 - 1974. :

State of New York

County of Albany

Jay Vredenburg, 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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Ludwig Becker, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ludwig Becker

R.F.D. 3, Pheasant La.

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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for Redetermination of a Deficiency or a Revision :
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Unincorporated Business Tax :
under Article 23 of the Tax Law
for the Years 1966 - 1974. :

State of New York
County of Albany

Jay Vredenburg, 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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Sidney Meyers the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Sidney Meyers
51 Chambers St.
New York, NY 10007

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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 26, 1979

Ludwig Becker
R.F.D. 3, Pheasant La.
Huntington, NY 11743

Dear Mr. Becker:

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(s) 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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Sidney Meyers
51 Chambers St.
New York, NY 10007
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
LUDWIG BECKER
for Redetermination of Deficiencies or
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the
Years 1966 through 1974. :

DECISION

Petitioner, Ludwig Becker, RFD# 3, Pheasant Lane, Huntington, New York 11743, filed a petition for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1966 through 1974 (File No. 15568).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 9, 1979 at 2:45 P.M. Petitioner appeared with Sidney Meyers, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner's business activities as a salesman constituted the carrying on of an unincorporated business during the years 1966 through 1974.

FINDINGS OF FACT

1. Petitioner, Ludwig Becker, and his wife filed New York State income tax returns for the years 1966 through 1974. He did not file any unincorporated business tax returns for those years.

2. On April 12, 1976, the Income Tax Bureau issued three statements of audit changes against petitioner, imposing unincorporated business taxes upon the business income received by him from his activities as a salesman during the years 1966 through 1974. The statements were issued based on a decision

by the State Tax Commission dated February 26, 1971 in which it held the petitioner subject to unincorporated business tax for the tax years 1963, 1964 and 1965. The decision was confirmed by the Appellate Division on December 18, 1975. Accordingly, the Income Tax Bureau issued three notices of deficiency on April 12, 1976, in the sum of \$8,981.58 in unincorporated business tax, plus interest of \$2,666.89, for a total due of \$11,648.47.

3. Petitioner was a cutlery salesman during the years 1966 through 1974. During these years he was president and a majority stockholder of F.W. Engels, Inc. for whom he sold cutlery in 1966 and 1967. Mr. Becker also sold cutlery for R.H. Forschner Co., Inc. throughout the years at issue. Mr. Becker contended that in December of 1967 R.H. Forschner Co., Inc. ordered him to give up all other selling activities and to sell for them exclusively from the beginning of 1968 through 1974. R.H. Forschner Co., Inc. did not require Mr. Becker to give up his administrative duties with F.W. Engels, Inc.

4. The Income Tax Bureau did not subject the salary received by petitioner from F.W. Engels, Inc. to unincorporated business tax, but it did subject commissions received by him in 1966 and 1967 from F.W. Engels, Inc. to unincorporated business tax. Ludwig Becker's salary from F.W. Engels, Inc. for 1966 and 1967 was \$15,160.00 and \$14,240.00, respectively. From 1968 through 1974, Mr. Becker's salary income from F.W. Engels, Inc. ranged from \$33,400.00 to \$43,565.00 with an average yearly salary of \$36,456.00.

5. Petitioner was not reimbursed for his expenses. He deducted his expenses from his gross commissions and reported only the net commissions on his returns. Ludwig Becker did not submit a breakdown of his business expenses and the gross commissions for the years at issue.

6. Petitioner contended that he had no office or office expense in New York and that he made no sales within New York State. Mr. Becker flew to his

Midwest territory assigned to him by R.H. Forschner Co., Inc. He kept a car in the Midwest which he used for his sales trips. Mr. Becker contended that upon completion of his activities, he left his car at his last stop and flew back to New York. He used his out-of-state automobile for the storage of records and merchandise and contended that this automobile was his office. He also contended that he mailed all orders back to R.H. Forschner Co., Inc. in New York City from his Midwest territory.

7. Petitioner contended that he made from twenty to twenty-four business trips of approximately one week's duration per year as required by R.H. Forschner Co., Inc. These business trips were made on alternating weeks and that on the weeks that he was not working for R.H. Forschner Co., Inc. in his Midwest territory, he was working for F.W. Engels, Inc. in Huntington Station, New York. Mr. Becker stated that he carried on the business activities of F.W. Engels, Inc. via the telephone or mail while working in the Midwest for R.H. Forschner Co., Inc.

8. R.H. Forschner Co., Inc. did not withhold taxes or social security from petitioner's compensation, nor did it provide any employee benefits.

9. Petitioner had no written contract with R.H. Forschner Co., Inc.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Ludwig Becker, from his selling activities during the years 1966 through 1974 constituted income from his regular business of selling and not compensation as an employee in accordance with section 703(b) of the Tax Law.

B. That petitioner's use of his out-of-state automobile for the storage of records and merchandise did not constitute a regular place of business outside of New York State; and, therefore, all of his business income was

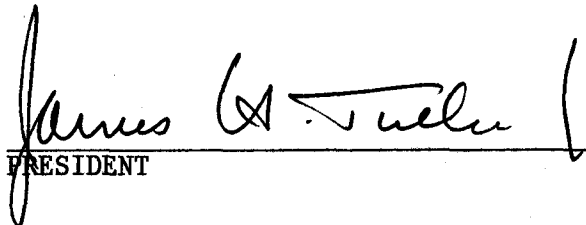
properly allocated to New York State in accordance with section 707(a) of the Tax Law.

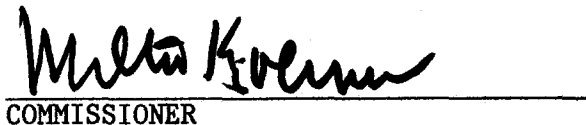
C. That the petition of Ludwig Becker is denied and the notices of deficiency issued April 12, 1976 are sustained, together with such additional interest as may be lawfully owing.

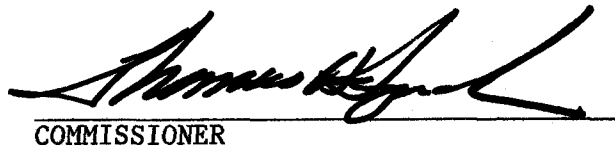
DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER