

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

George Costis :

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 1971 & 1972. :

State of New York

County of Albany

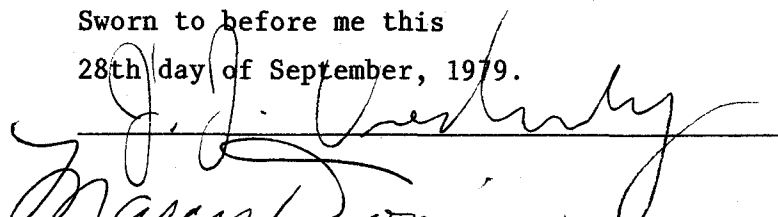
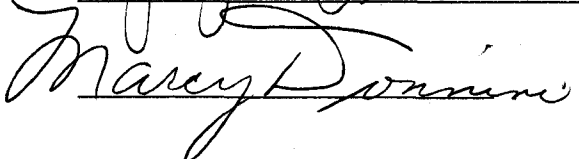
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon George Costis, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Costis
1933 Hexam Rd.
Schenectady, NY 12304

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
28th day of September, 1979.

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
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Unincorporated Business Tax :
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State of New York
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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 28th day of September, 1979, he served the within notice of Decision by certified mail upon Christian Y. Kouray 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. Christian Y. Kouray
525 State St.
Schenectady, NY 12305

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
28th day of September, 1979.

J. J. Vredenburg
Marcy L. Donnell

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

George Costis
1933 Hexam Rd.
Schenectady, NY 12304

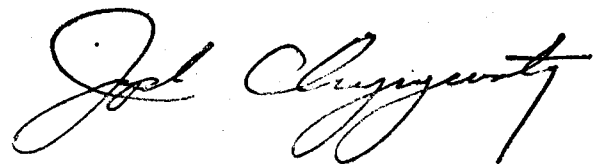
Dear Mr. Costis:

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 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,



cc: Petitioner's Representative
Christian Y. Kouray
525 State St.
Schenectady, NY 12305
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
GEORGE COSTIS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1971 and 1972.	:	

Petitioner, George Costis, 1933 Hexam Road, Schenectady, New York 12304, filed petitions for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1971 and 1972 (File Nos. 11700 and 11701).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on October 25, 1978 at 9:00 A.M. Petitioner appeared pro se and by Christian X. Kouray. The Income Tax Bureau appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a sales representative during 1971 and 1972 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, George Costis, and his wife filed New York State income tax resident returns for 1971 and 1972. Petitioner did not file New York State unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's sales activities constituted the carrying on of an unincorporated business. Accordingly, it issued a Notice of Deficiency on October 29, 1973 for 1971 in the amount of \$1,157.57 in unincorporated business tax, plus \$106.84 in interest, for a total of \$1,264.41. On July 28, 1975, the Income Tax Bureau issued another Notice of Deficiency for 1972 in the amount of \$1,142.42 in unincorporated business tax, plus interest of \$195.04, for a total of \$1,337.28.

3. Petitioner was an outside salesman representing three principals during 1971 and 1972. The products sold by petitioner were windows, caulking compounds and glazing compounds, all of which were non-competitive. Petitioner's principals did not exercise any substantial supervision or control over his sales activities and sales techniques, or over the time devoted to sales.

4. Petitioner was required to attend periodic trade shows, to service customer's product problems, to submit periodic reports, and to restrict his efforts to a specific territory.

5. Petitioner was paid on a commission basis by his principals. Said principals did not withhold Federal and New York State income taxes or Social Security taxes from his income during 1971 and 1972. He was not reimbursed for any of the business expenses he incurred in connection with this sales activities. He was free to work for other principals as long as the lines of the other principals were non-competitive. He did not have any written employment contract.

6. Petitioner was covered for disability insurance by one principal and had a medical plan with one of his other principals.

CONCLUSIONS OF LAW

A. That the income received by petitioner, George Costis, from the principals he represented during 1971 and 1972 constituted income from his regular business of selling. It did not constitute compensation as an employee exempt from unincorporated business tax by virtue of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner during 1971 and 1972 constituted the carrying on of an unincorporated business, within the meaning and intent of section 703 of the Tax Law; thus, the income derived therefrom is subject to unincorporated business tax.

C. That the petitions of George Costis are denied and the notices of deficiency issued on October 29, 1973 and July 28, 1975 are sustained, together with such additional interest as may be lawfully due.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER