

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Saraim Fletcher :

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 Year 1970. :

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 19th day of October, 1979, he served the within notice of Decision by certified mail upon Saraim Fletcher, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Saraim Fletcher

11 North Plandome Rd.

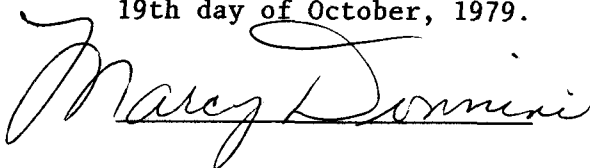
Port Washington, NY 11050

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

19th day of October, 1979.


Nancy Dominici



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

October 19, 1979

Saraim Fletcher
11 North Plandome Rd.
Port Washington, NY 11050

Dear Mr. Fletcher:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SARAIM FLETCHER	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1970	:	

Petitioner Saraim Fletcher, 11 North Plandome Road, Port Washington, New York 11050, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1970 (File No. 15754).

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on January 10, 1979 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (E. Schwadron, Esq., of counsel).

ISSUE

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

FINDINGS OF FACT

1. Petitioner, Saraim Fletcher, and Margot E. Fletcher, his wife, timely filed a New York State combined income tax resident return for the year 1970, on which net business income was reported from petitioner's sale activities. Mr. Fletcher did not file an unincorporated business tax return.

2. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Saraim Fletcher, along with an explanatory statement of audit changes, imposing \$634.55 in unincorporated business tax, plus \$150.79 in interest for a total due of \$785.34 on the grounds that the income derived from his sales activities was held subject to the unincorporated business tax.

3. The Income Tax Bureau issued the aforementioned deficiency based on information submitted by petitioner, Saraim Fletcher, in a letter dated January 15, 1973, in which he stated:

"I was a cold-canvass salesman of telephone and telephone dialing equipment on an independent-contractor basis." "The only control exercised by these principals was restrictions regarding the territory which I could canvass." "Yes, I was free to work for anyone not competing with these principals."

In addition, he indicated that there was no arrangement as to the division of time and effort between his principals.

4. Petitioner, Saraim Fletcher, is a salesman of telephone equipment and services, and sold for Teleaction Phone Corp. ("Teleaction"), located in the State of New Jersey, and State-Wide Merchandise Brokerage Corp. ("State-Wide"), located in New York City.

5. Petitioner submitted a photo-copy of an unsigned and undated "Salesman's Agreement," purported to be a contract between himself and Teleaction. This agreement indicated, in part, that he:

- (a) was required to devote his full time efforts selling for Teleaction.
- (b) was restricted to selling in specific territories.
- (c) was not reimbursed for any selling expenses incurred.

(d) was furnished with sales materials, samples, catalogs and a price book.

(e) had no authority to represent or act on behalf of Teleaction.

6. Petitioner contended that he was provided with secretarial and office facilities by Teleaction, although he never utilized them, except to call the office for messages.

7. All communications between petitioner, Teleaction and State-Wide was conducted by telephone and correspondence.

8. The products of Teleaction and State-Wide were non-competitive and were usually sold by petitioner to the same client, without any division of time and effort. Although he was required to report his sales activities to Teleaction and State-Wide, no evidence was submitted to show that they exercised any control over his sales endeavors, or that they regulated the manner in which he attempted to solicit business.

9. Petitioner was compensated on a commission basis, with no withholding of payroll taxes. He reported his commission income on a Federal schedule "C" and paid self-employment taxes.

10. Petitioner was provided with group life insurance by Vikoa, Inc., the parent company of Teleaction.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Saraim Fletcher, during the year 1970 constituted the carrying on of an unincorporated business pursuant to section 703 of the Tax Law, and his income derived therefrom was subject to the unincorporated business tax in accordance with section 701 of the Tax Law.


B. That the petition of Saraim Fletcher is denied and the Notice of Deficiency issued March 31, 1975 is sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

OCT 19 1979

PRESIDENT



COMMISSIONER



COMMISSIONER