

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Paul Grotsky

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 1969 & 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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Paul Grotsky, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Paul Grotsky
20C Glenwood Dr.
Old Bridge, NJ 08857

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
17th day of August, 1979.

Victoria Gary

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Paul Grotsky :

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 1969 & 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 17th day of August, 1979, he served the within notice of Decision by certified mail upon Milton Weinstein 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. Milton Weinstein
1 Pennsylvania Plz.
New York, NY 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
17th day of August, 1979.

Victoria Gary

Jay J. Vredenburg



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

STATE TAX COMMISSION

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 17, 1979

Paul Grotsky
20C Glenwood Dr.
Old Bridge, NJ 08857

Dear Mr. Grotsky:

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,

A handwritten signature in dark ink, appearing to read "John J. Sollecito", written in a cursive style.

cc: Petitioner's Representative
Milton Weinstein
1 Pennsylvania Plz.
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PAUL GROTSKY	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1969 and 1970.	:	

Petitioner, Paul Grotsky, 20-C Glenwood Drive, Old Bridge, New Jersey 08857, 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 1969 and 1970 (File No. 13749).

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 January 26, 1977 at 1:15 P.M. Petitioner appeared by Milton Weinstein, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner's sales activities constituted the carrying on of an unincorporated business, within the meaning and intent of section 703 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Paul Grotsky, worked under a written contract of employment for Carosell Sales, Inc. during 1969 and 1970.

2. The employment contract provided in part, the following: "You are not to be deemed our employee and it is agreed that you are an independent contractor." Said contract also contained other provisions restricting petitioner sales territory and the customers he could sell to within said territory.

3. Paragraph 12 of the contract provided that the contract constituted the entire understanding between the parties and that it could not be terminated, amended or discharged orally. The contract did not contain requirements as to supervision or control of activities, nor did it contain requirements for work in a showroom.

4. Petitioner's selling appointments were scheduled by his principal's sales manager, to whom he was required to report periodically. Petitioner was told when to take vacations and was required to attend sales shows and to sell to customers, from whom he earned no commissions.

5. Petitioner was required to report to his principal's showroom every Tuesday.

6. Although not specifically stated in his employment contract, petitioner was forbidden to represent other principals.

7. Petitioner was not prohibited from selling to new customers, as long as his regular customers were given preference.

8. Petitioner did not maintain an office, employ assistants or belong to any pension or retirement plans for the self-employed.

9. Petitioner had a drawing account and was not reimbursed for expenses. Neither Federal, State, nor social security taxes were withheld from his earnings.

CONCLUSIONS OF LAW

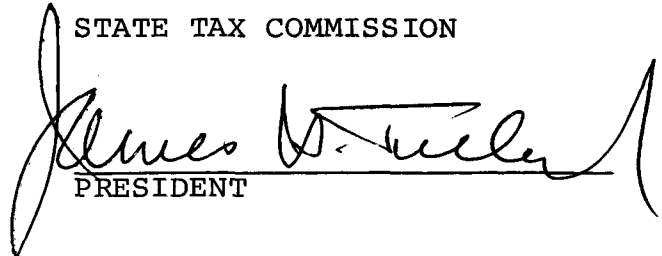
A. That the income received by petitioner, Paul Grotsky, from Carosell Sales, Inc. during 1969 and 1970, constituted income from his regular business activities and not compensation as an employee exempt from the imposition of unincorporated business tax, within the meaning and intent of section 703(b) of the Tax Law.

B. That the petition of Paul Grotsky is denied and the Notice of Deficiency issued December 22, 1975 for \$1,997.15 is sustained.

DATED: Albany, New York

AUG 17 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER