

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

October 9, 1979

Stanley Harrison  
192 15-50th Ave.  
Flushing, NY 11365

Dear Mr. Harrison:

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

Sincerely,

STATE TAX COMMISSION

cc: Petitioner's Representative  
Sol Rifkin  
Louis A. Rifkin & Co., CPA's  
19 West 44th St.  
New York, NY 10036  
Taxing Bureau's Representative

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Stanley Harrison :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Personal Income Tax :

under Article 23 of the Tax Law

for the Years 1964 - 1966. :

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 9th day of October, 1979, he served the within notice of Decision by certified mail upon Stanley Harrison, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Stanley Harrison

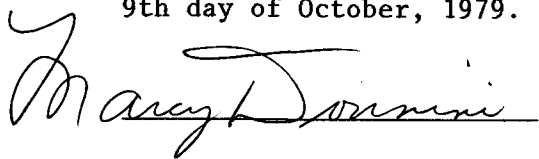
192 15-50th Ave.

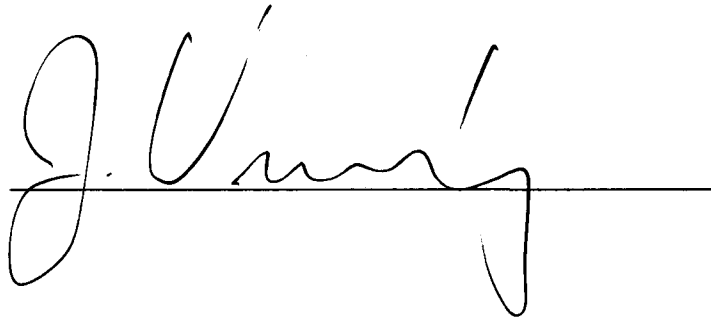
Flushing, NY 11365

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  
9th day of October, 1979.

  
Mary Dominici

  
Jay Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Stanley Harrison :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

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Personal Income Tax :

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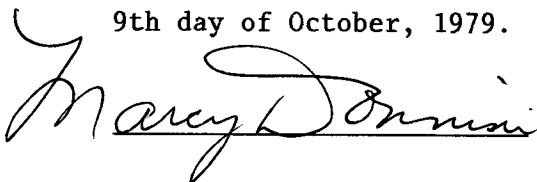
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of October, 1979, he served the within notice of Decision by certified mail upon Sol Rifkin the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

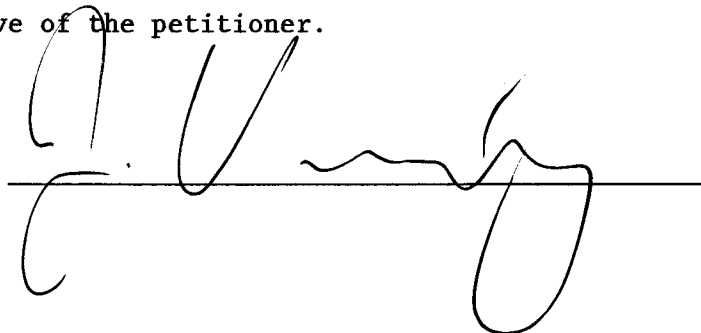
Mr. Sol Rifkin  
Louis A. Rifkin & Co., CPA's  
19 West 44th St.  
New York, NY 10036

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  
9th day of October, 1979.

  
Mary L. Donnan



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
STANLEY HARRISON	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1964, 1965 and 1966.	:	

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Petitioner, Stanley Harrison, 192-15-50th Avenue, Flushing, New York 11365, 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 1964, 1965 and 1966 (File No. 00258).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 20, 1978 at 9:15 A.M. Petitioner appeared by Sol Rifkin, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Aliza Schwadron, Esq., of counsel).

ISSUE

Whether petitioner's services as an employee of Harrison Braid Corporation were so interrelated and intergrated with his activities on behalf of his unincorporated business, the Harrison Company, as to constitute a part of the unincorporated business during 1964, 1965 and 1966.

FINDINGS OF FACT

1. Petitioner, Stanley Harrison, timely filed New York State personal income tax returns for 1964, 1965 and 1966, on which he reported his wage income from Harrison Braid Corporation ("corporation").

He also filed unincorporated business tax returns for said years for Harrison Company ("company"), of which he was the sole proprietor.

2. The Income Tax Bureau issued a Statement of Audit Changes against petitioner. On it, the bureau added wage income which he derived from the corporation to his business income from the company, and arrived at additional unincorporated business tax due. This was done on the grounds that petitioner's activities on behalf of the corporation were performed in the furtherance and for the direct benefit of the business of the company. Accordingly, the Income Tax Bureau issued a Notice of Deficiency on March 11, 1968 for \$1,862.38 in unincorporated business tax, plus \$198.53 in interest, for a total of \$2,060.91.

3. The company was in existence for many years prior to the years at issue. Sometime prior to said year at issue, the corporation was formed in order to afford petitioner limited liability, and also to enable him to set up a pension plan for himself and his employees. There was no change in the method of operations except for bookkeeping purposes.

4. During the years at issue, petitioner and his wife were the sole owners of the corporation. Petitioner was the sole proprietor of the company. Both entities were located at and operated from the same premises. The premises comprised an office, a shipping room, and a stockroom. There was a bookkeeper and approximately seven other employees. Petitioner guided the operations of both entities simultaneously.

5. Petitioner was a jobber who served ladies and children's coat manufacturers. He purchased braids and other finished items and resold them. He also purchased raw materials which outside contractors

processed to his customers' specifications.

6. Petitioner contended that he performed selling services for the corporation and that he purchased and processed merchandise for the company. He did not submit documentary or any satisfactory evidence to show a clear division of his time between the corporation and the company, nor did he show that the services which he performed for the corporation were performed entirely independently of the company's business.

#### CONCLUSIONS OF LAW

A. That the services performed by petitioner, Stanley Harrison, as an employee of Harrison Braid Corporation during 1964, 1965 and 1966, were performed in the furtherance and for the direct benefit of his unincorporated business. Said services were so integrated and interrelated with said business as to constitute part of the unincorporated business regularly carried on by him; therefore, the salary received by him as an employee of the corporation was not exempt from the imposition of unincorporated business tax, in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That petitioner's aforesaid activities on behalf of the corporation constituted the carrying on of an unincorporated business, within the meaning and intent of section 703(a) of the Tax Law. The income which he derived therefrom was subject to unincorporated business tax, under section 701 of the Tax Law.

C. That the petition of Stanley Harrison is denied and the Notice of Deficiency issued on March 11, 1968 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 9 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER