

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

KENNETH KOLKEBECK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~XXXXXXXXXX~~ :
1963 and 1964

State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 6th day of April, 1979, she served the within

Notice of Decision by (certified) mail upon Kenneth Kolkebeck

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Mr. Kenneth Kolkebeck
3 Berry Lane
Glen Cove, NY 11542

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)~~
~~XXXXXX~~ 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

6th day of April, 1979.

Maureen J. Papineau
John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
KENNETH KOLKEBECK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1963 and 1964.

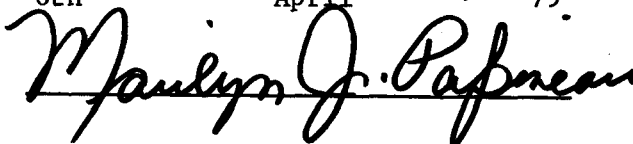

State of New York
County of Albany

John Huhn , 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 6th day of April , 1979 , he served the within
Notice of Decision by (certified) mail upon Alvin I. Goidel
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Alvin I. Goidel, P.C.
Goidel, Goidel & Helpenstein
127 John Street
New York, NY 10038
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

6th day of April , 1979.



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

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

April 6, 1979

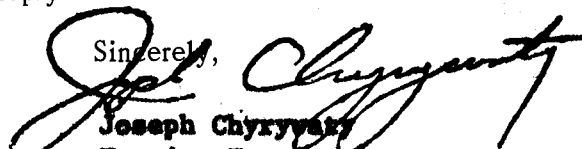
Mr. Kenneth Kolkebeck
3 Berry Lane
Glen Cove, NY 11542

Dear Mr. Kolkebeck:

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,

Joseph Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
KENNETH KOLKEBECK	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1963 and 1964.	:	

Petitioner, Kenneth Kolkebeck, 3 Berry Lane, Glen Cove, New York 11542, 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 1963 and 1964 (File No. 01892).

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 November 14, 1977 at 2:45 P.M. Petitioner appeared by Alvin I. Goidel, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a commission salesman during 1963 and 1964 is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Kenneth Kolkebeck, and his wife, Eleanor Kolkebeck, timely filed joint New York State income tax resident returns for 1963 and 1964 and reported business income from his activities as a commission salesman. Unincorporated business tax returns were not filed for said years.

2. On May 24, 1967, the Income Tax Bureau issued a Notice of Deficiency against petitioner, asserting unincorporated business tax of \$628.39 and interest of \$94.77, for a total of \$723.16, on the income derived from his activities as a commission salesman. Petitioner timely filed a petition for redetermination of said deficiency.

3. Petitioner, Kenneth Kolkebeck, was a salesman for J.S. Zulick, Inc. (hereinafter "the company"), which was located in Pennsylvania during 1963 and 1964. He was compensated on a commission basis and no taxes were withheld on said commissions.

4. The company assigned petitioner the territory of northern New Jersey, the New England States and Metropolitan New York.

5. Petitioner was required to contact the main office in Pennsylvania by telephone daily and by correspondence twice a week.

6. Petitioner was provided with samples and all sales forms. All orders were subject to the terms, conditions, and approval of the company.

7. Each Wednesday, petitioner was required to be present at the showroom and sales office located at West 34th Street, New York, New York. Although these premises were leased by petitioner, the company reimbursed him for the monthly rent, in addition to any commissions earned and due petitioner. As did the stationery, sales forms and telephone, the showroom and sales office listed the name of J.S. Zulick, Inc.

8. The showroom and sales office were used by visiting company salesmen and by customers. Although he was required to assist out-of-town salesmen and to take sales order from customers, petitioner was entitled only to commissions from customers located within his assigned sales territory.

9. Petitioner, Kenneth Kolkebeck, was required by the company to attend trade shows. At these shows he made sales to customers from all locations; however, he was only entitled to commissions on sales made to customers located within his assigned sales territory.

10. The company required petitioner to substantially increase his automobile insurance coverage over the minimum amounts carried and it reimbursed him for the additional costs of the coverage.

11. Petitioner did not represent or sell for any other firm during 1963 and 1964.

12. Petitioner scheduled his own appointments which were subject to change by the sales manager who was located in the corporation's main office in Pennsylvania.

13. Petitioner did not employ any assistants or employees and all commissions earned were from his own activities as a salesman.

CONCLUSIONS OF LAW

A. That J.S. Zulick, Inc. exercised sufficient direction and control over petitioner's activities as to cause him to become its employee, within the meaning and intent of section 703(b) of the Tax Law. Thus, the income derived from petitioner's activities as a salesman is not subject to unincorporated business tax.

B. That the petition of Kenneth Kolkebeck is granted and the Notice of Deficiency issued May 24, 1967 is cancelled.

DATED: Albany, New York
April 6, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER