

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Margolin & Carlin :  
c/o Eugene Carlin : 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 1967 - 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 December, 1979, he served the within notice of Decision by certified mail upon Margolin & Carlin, c/o Eugene Carlin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Margolin & Carlin  
c/o Eugene Carlin  
122 Euston Rd.  
Garden City, NY 11530

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 December, 1979.

Joanne Knapp

J. J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Margolin & Carlin :  
c/o Eugene Carlin : 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 1967 - 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 December, 1979, he served the within notice of Decision by certified mail upon Bertrand Leopold 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. Bertrand Leopold  
18 Joseph St.  
Hyde Park, NY 11040

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  
19th day of December, 1979.

Joanne Knapp

J. J. Vredenburg

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

December 19, 1979

Margolin & Carlin  
c/o Eugene Carlin  
122 Euston Rd.  
Garden City, NY 11530

Gentlemen:

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  
Bertrand Leopold  
18 Joseph St.  
Hyde Park, NY 11040  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
MARGOLIN and CARLIN : DECISION  
for Redetermination of a Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law for :  
the Years 1967, 1968, 1969 and 1970.

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Petitioners, Harry Margolin and Eugene Carlin, individually and as co-partners, d/b/u the name and style of "Margolin and Carlin," c/o Eugene Carlin, 112 Euston Road, Garden City, New York 11530, 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 1967, 1968, 1969 and 1970 (File No. 00320).

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 December 15, 1977 at 2:45 P.M. Petitioners appeared by Bertrand Leopold. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency was issued timely for 1967, 1968, 1969 and 1970.

II. Whether the activities of petitioners Harry Margolin and Eugene Carlin, d/b/u the name and style of Margolin and Carlin, constituted the carrying on of an unincorporated business, or whether such services were rendered as employees and, thus, were exempt from unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Margolin and Carlin, filed New York State partnership returns for 1967, 1968, 1969 and 1970.

2. Petitioner did not complete the unincorporated business tax portion of the partnership form, but did attach a schedule showing the total gross receipts and the business expenses which were paid for the years at issue. The schedule of Unincorporated Business Tax and Payments (Schedule "U-D") on the face of the partnership return for 1967 was marked "Salesmen-working out of home-no employees, not subject." A zero was marked on the line or lines usually reserved for the amount of unincorporated business tax. The returns for the other years were similarly marked.

3. The New York State partnership returns were due and/or filed, for their respective calendar years as follows:

<u>TAX YEAR</u>	<u>DUE DATE OR EXTENDED DUE DATE</u>	<u>FILING DATE</u>
1967	April 15, 1968	May 24, 1968
1968	May 15, 1969	June 18, 1969
1969	April 15, 1970	April 15, 1970
1970	April 15, 1971	April 15, 1971

4. On February 28, 1972, the Income Tax Bureau issued a Notice of Deficiency to Margolin and Carlin, asserting unincorporated business tax of \$7,250.91, plus interest of \$765.39, for a total of \$8,016.30. This was done on the grounds that activities as salesmen were subject to unincorporated business tax.

5. Petitioner, Margolin and Carlin, was retained by Handi-Bag Company, Inc. ("Handi-Bag") as sales representative for its mid-west territory, which territory was divided and serviced as desired by Harry Margolin and Eugene Carlin, partners in Margolin and Carlin.

6. Handi-Bag allowed petitioner to sell other noncompeting lines with the stipulation that the partners devote 90% of their time and effort to Handi-Bag products. During the years 1967 through 1970, petitioner represented from four to seven other firms, and the partners sold noncompeting lines of merchandise, without a division of time and effort.

7. Although both partners were required to attend sales meeting and to report their daily sales, none of the firms which they represented, including Handi-Bag, exercised any control over their sales activities, nor did said firms control or regulate the manner in which they attempted to solicit business.

8. Harry Margolin and Eugene Carlin were compensated as a partnership, regardless of the amount of sales generated by each partner. They were paid on a commission basis and no payroll taxes were withheld. There was no reimbursement of business expenses, and net commissions were equally divided between the partners after allowing for business expenses.

9. Petitioner contributed to the advertising costs of its customers.

10. Petitioner maintained a partnership checking account and had a Federal employer identification number.

11. Petitioner maintained a self-employed retirement plan ("Keogh" Plan) and paid self-employment taxes. Petitioner argued that in the event the petition is denied, payments to charitable organizations and to the Keogh Plan should be allowed in computing the unincorporated business tax liability; however, no evidence was submitted to establish the amounts paid to charitable organizations and to the Keogh Plan.

CONCLUSIONS OF LAW

A. That the New York State partnership returns as filed for 1967, 1968, 1969 and 1970 did not contain sufficient information so as to start the running of the statutory period of limitation; accordingly, that portion of the Notice of Deficiency which pertains to 1967 was timely, in accordance with the meaning and intent of sections 683 and 722 of the Tax Law.

B. That the joint-venture activities of "Margolin and Carlin" during 1967, 1968, 1969 and 1970 constituted the carrying on of an unincorporated business, within the meaning and intent of section 702(a) of the Tax Law. The income derived therefrom is subject to unincorporated business tax under section 701 of the Tax Law.

C. That the income received during the years 1967 through 1970 constituted income from their business activities and not compensation as employees, within the meaning and intent of section 703(b) of the Tax Law.

D. That the petition of Margolin and Carlin is denied and the Notice of Deficiency issued on February 28, 1972 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

DEC 19 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER