

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Robert H. Martin :

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 1968 - 1973. :

State of New York

County of Albany

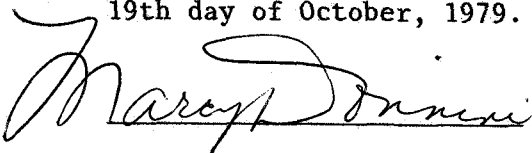
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon William H. Gilbert the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

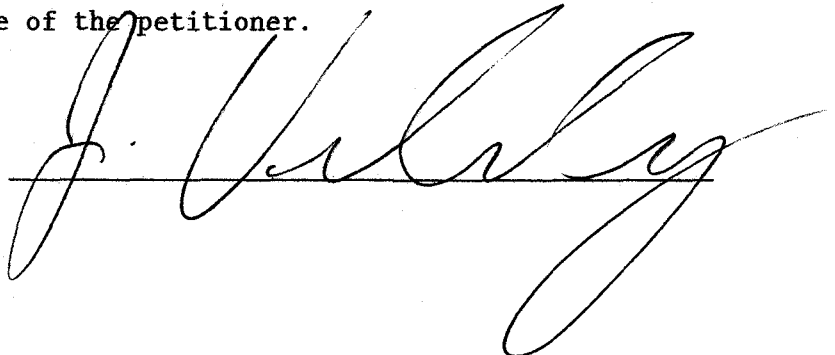
Mr. William H. Gilbert
Ohlin, Damon, Morey, Sawyer & Moot
1800 Liberty Bank Bldg.
Buffalo, NY 14202

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 October, 1979.


Mary Donneni



STATE OF NEW YORK
STATE TAX COMMISSION

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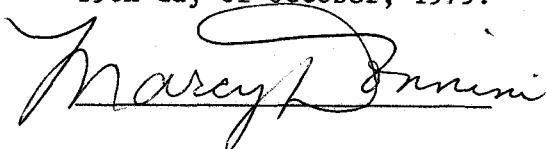
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of October, 1979, he served the within notice of Decision by certified mail upon Robert H. Martin, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

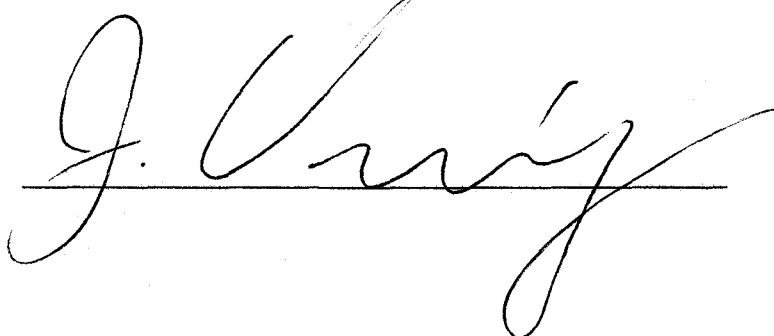
Robert H. Martin
121 W. Fairmount Ave.
Lakewood, NY 14750

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.


Marcy D. Dinnin


J. Vredenburg

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

October 19, 1979

Robert H. Martin
121 W. Fairmount Ave.
Lakewood, NY 14750

Dear Mr. Martin:

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
William H. Gilbert
Ohlin, Damon, Morey, Sawyer & Moot
1800 Liberty Bank Bldg.
Buffalo, NY 14202
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
ROBERT H. MARTIN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1968 through 1973.	:	

Petitioner, Robert H. Martin, 121 West Fairmount Avenue, Lakewood, New York 14750, filed petitions for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968 through 1973 (File No. 01555).

A formal hearing was held before Alan R. Golkin, Hearing Officer, at the offices of the State Tax Commission, State Office Building, 65 Court Street, Buffalo, New York, on July 12, 1977 at 9:15 A.M. Petitioner appeared by William H. Gilbert, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUES

I. Whether the income derived from petitioner's activities as a sales representative was subject to unincorporated business tax.

II. In the event that petitioner was subject to unincorporated business tax, whether he would be entitled to allocate his sales income to sources within and without New York State.

III. Whether petitioner had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1968 through 1973.

FINDINGS OF FACT

1. Petitioner, Robert H. Martin, timely filed New York State personal income tax returns for the years 1968 through 1973, on which he reported his occupation as being a manufacturer's representative; however, he did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's activities constituted the carrying on of an unincorporated business, and that the income derived therefrom was subject to unincorporated business tax. Accordingly, on May 20, 1974, the Bureau issued a Notice of Deficiency for 1968, 1969, 1970 and 1971 in the amount of \$4,803.85 in unincorporated business tax, plus \$1,804.67 in penalty and \$971.75 in interest, for a total due of \$7,580.27. On February 24, 1975, it issued another Notice of Deficiency for 1972 and 1973 in the amount of \$3,950.18 in unincorporated business tax, plus \$372.79 in interest, for a total due of \$4,322.97.

3. Petitioner acted as a representative for various manufacturers of furniture, none of which supervised his sales activities, controlled his schedule, or restricted his time and effort. Petitioner had to sell at prices and terms dictated to him by the manufacturers. Once, one of said manufacturers asked him to discontinue representing a competing line.

4. Petitioner was paid on a commission basis and no payroll taxes were withheld from his earnings by any of his principals.

5. Petitioner resided in New York State, had his automobile registered in New York, and had his home phone number displayed on his business cards. Petitioner did not maintain an office outside New York State.

6. On September 1, 1972, petitioner joined in a partnership with his son-in-law, which arrangement continued through 1973. The partnership's only office was located outside New York State.

7. During the periods at issue, petitioner earned a small percentage of his annual income from sales and/or services within New York State.

8. During the period January 1, 1972 through August 31, 1972, petitioner had net income from his sales activities amounting to \$22,130.00.

9. Petitioner filed his tax returns for 1968 through 1973, based on the advice of counsel and professional tax advisors.

CONCLUSIONS OF LAW

A. That petitioner's activities as a sales representative during the years 1968 through 1971, and the period January 1, 1972 through August 31, 1972, constituted that of an individual carrying on an unincorporated business as defined under section 703(a) of the Tax Law; thus, the income derived therefrom was subject to unincorporated business tax under section 701 of the Tax Law.

B. That petitioner did not maintain a regular place of business outside New York State during the years 1968 through 1971 and during the period January 1, 1972 through August 31, 1972; therefore, all income earned during the aforementioned periods is allocable to New York under section 707(a) of the Tax Law.

C. That for the period September 1, 1972 through December 31, 1972 and for 1973, petitioner was not carrying on an unincorporated business in New York State.

D. That petitioner's failure to file unincorporated business tax returns was due to reasonable cause and not due to willful neglect; therefore, penalties imposed under sections 685(a) (1) and 685(a) (2) of the Tax Law are hereby cancelled.

E. That the petition of Robert H. Martin relating to the Notice of Deficiency issued on May 20, 1974 covering the years 1968 through 1971, is granted to the extent provided for in Conclusion of Law "D"; however, except as so granted, it is in all other respects denied. The Notice of Deficiency as modified is sustained, together with such interest as may be lawfully due.

F. That the petition of Robert H. Martin relating to the Notice of Deficiency issued on February 24, 1975 covering 1972 and 1973 is granted to the extent provided for in Conclusions of Law "C" and "D". Petitioner's net income allocable to New York State which amounts to \$22,130.00, is to be further reduced by a deduction of \$4,426.00 for personal services under section 708(a), and by an allowable business exemption of \$3,333.33 under section 709(1) of the Tax Law. Except as so granted, the petition is otherwise denied and the Notice of Deficiency as modified is sustained, together with such interest as may be lawfully due.

DATED: Albany, New York

OCT 19 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER