

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT ROSENBLOOM

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~~ :
1969, 1970 and 1971

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 24th day of January , 1979 , ~~he~~ served the within
Notice of Decision by (certified) mail upon Albert Rosenbloom

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Albert Rosenbloom
162-41 Powell Cove Boulevard
Whitestone, NY

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~~
~~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

24th day of January , 1979.

Marilyn J. Papineau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT ROSENBLOOM

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (X) 23 of the :
Tax Law for the Year(s) ~~xxxxxx~~ :
1969, 1970 and 1971

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 24th day of January , 1979 , he served the within
Notice of Decision by (certified) mail upon Jerome Brickman, P.A.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jerome Brickman
c/o Scher & Brickman
110 West 51st Street
New York, NY 10020
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

24th day of January , 1979.

Marilyn J. Papineau

John Huhn



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

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

January 24, 1979

Albert Rosenbloom
162-41 Powell Cove Boulevard
Whitestone, NY

Dear Mr. Rosenbloom:

Please take notice of the **Notice of Decision**
of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section **(x) 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 **four 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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALBERT ROSENBLOOM	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1969, 1970 and 1971.	:	

Petitioner, Albert Rosenbloom, 162-41 Powell Cove Boulevard, Whitestone, New York, 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, 1970 and 1971 (File No. 11859).

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 November 14, 1977 at 2:45 P.M. Petitioner appeared by Jerome Brickman, P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a salesman during 1969, 1970 and 1971 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Albert Rosenbloom, filed New York State personal income tax returns for 1969, 1970 and 1971. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's selling activities during the years at issue constituted the carrying on of an unincorporated business. Accordingly, it issued a Notice of Deficiency for 1969 on January 26, 1976 in the amount of \$1,255.76 in unincorporated business tax, plus \$596.49 in penalty and \$435.50 in interest, for a total of \$2,287.75. It also issued a Notice of Deficiency for 1970 and 1971 on November 24, 1975 in the amount of \$3,504.73 in unincorporated business tax, plus \$2,428.48 in penalty and \$1,102.61 in interest, for a total of \$7,035.82.

3. During the years at issue, petitioner was employed as a sales manager by Tropical Fish Hobbies Publications, Inc. (hereinafter referred to as "TFH") and its two subsidiaries, Bader Industries, Inc. and Miracle Pet Products, Inc. He was to act in said capacity for the three entities, since all of them were in the tropical fish accessories business. The President of TFH hired petitioner because of his expertise in this area. Petitioner's duties included opening new accounts and supervising the activities

of nine salesmen on behalf of the three corporations. He was supplied with an office and a secretary at the premises of Bader Industries, Inc. in Pinebrook, New Jersey. He was also given office space and the use of facilities on the business premises of TFH in Jersey City, New Jersey, which was also the location of Miracle Pet Products, Inc.

4. Petitioner was paid a weekly salary by each of the three corporations and was issued withholding tax statements. Income taxes and social security were withheld from his compensation. He was covered by workmen's compensation and received paid vacations. Petitioner performed his duties under the control and direction of the President of TFH. Petitioner did not maintain an office of his own, nor did he finance his own pension plan or have his own letterheads and business cards.

5. In 1969 petitioner introduced the entire lines of the three corporations to a very large account, namely, Two Guys Department Stores (hereinafter referred to as "Two Guys"). Two Guys required a complete tropical fish line and requested that tropical fish (as well as all tanks and accessories) be supplied. With the consent and encouragement of the President of TFH, petitioner arranged for the tropical fish to be provided to Two Guys by George Noble, a fish wholesaler. Thereafter, petitioner was regularly paid commissions by George Noble and, with the consent of TFH, provided services for George Noble which required a relatively small amount of petitioner's time.

6. Petitioner was not controlled and directed in any manner by George Noble. He filed Federal Schedule "C" to report the commissions earned and to claim deductions against this income. For New York State personal income tax purposes, petitioner reported his compensation from TFH, Bader Industries, Inc. and Miracle Pet Products, Inc. as wages, and his commission income from George Noble as business income. Petitioner's net business income derived from his activities on behalf of George Noble was \$15,324.96 in 1969, \$18,310.33 in 1970 and \$24,349.71 in 1971.

CONCLUSIONS OF LAW

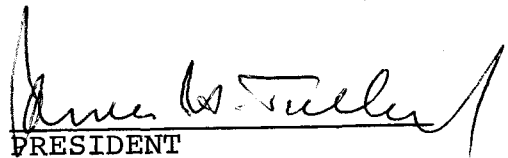
A. That petitioner, Albert Rosenbloom, performed services as an employee for Tropical Fish Hobbies Publications, Inc., Bader Industries, Inc. and Miracle Pet Products, Inc. and that the income derived therefrom during 1969, 1970 and 1971 was not subject to unincorporated business tax, in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the activities of petitioner, Albert Rosenbloom, on behalf of George Noble during 1969, 1970 and 1971, constituted the carrying on of an unincorporated business; thus, the net income derived therefrom of \$15,324.96 in 1969, \$18,310.33 in 1970 and \$24,349.71 in 1971 was subject to unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Albert Rosenbloom is granted to the extent shown in Conclusions of Law "A" and "B", above. The Income Tax Bureau is hereby directed to so modify the notices of deficiency issued January 26, 1976 and November 24, 1975 and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
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January 24, 1979

Albert Rosenbloom
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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 Chyrywat
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

SMALL CLAIMS

TA-26 (4-76) 25M

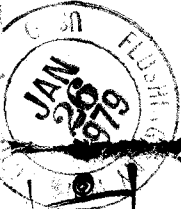
STATE OF NEW YORK

Department of Taxation and Finance

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N. Y. 12227



TO
SENDER

REASON CHECKED

- Unclaimed ☐ Refused ☐
Addressee unknown ☐
Insufficient Address ☐
No such street ☐ number ☐
No such office in state ☐
Do not re-mail in this envelope ☒

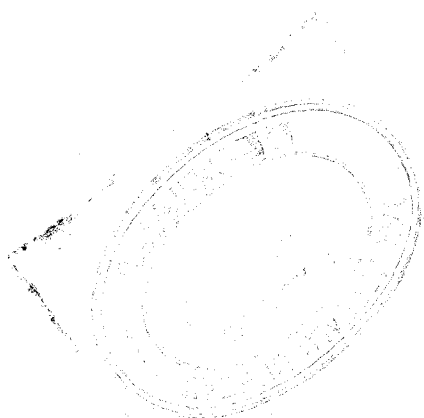
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**ALWAYS USE
ZIP CODE**

Albert Rosenbloom
162-41 Powell Cove Boulevard
Whitestone, NY

269437



31/79

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
ALBERT ROSENBLOOM	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1969, 1970 and 1971.	:	

Petitioner, Albert Rosenbloom, 162-41 Powell Cove Boulevard, Whitestone, New York, 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, 1970 and 1971 (File No. 11859).

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 November 14, 1977 at 2:45 P.M. Petitioner appeared by Jerome Brickman, P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

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FINDINGS OF FACT

1. Petitioner, Albert Rosenbloom, filed New York State personal income tax returns for 1969, 1970 and 1971. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner's selling activities during the years at issue constituted the carrying on of an unincorporated business. Accordingly, it issued a Notice of Deficiency for 1969 on January 26, 1976 in the amount of \$1,255.76 in unincorporated business tax, plus \$596.49 in penalty and \$435.50 in interest, for a total of \$2,287.75. It also issued a Notice of Deficiency for 1970 and 1971 on November 24, 1975 in the amount of \$3,504.73 in unincorporated business tax, plus \$2,428.48 in penalty and \$1,102.61 in interest, for a total of \$7,035.82.

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CONCLUSIONS OF LAW

A. That petitioner, Albert Rosenbloom, performed services as an employee for Tropical Fish Hobbies Publications, Inc., Bader Industries, Inc. and Miracle Pet Products, Inc. and that the income derived therefrom during 1969, 1970 and 1971 was not subject to unincorporated business tax, in accordance with the meaning and intent of section 703(b) of the Tax Law.

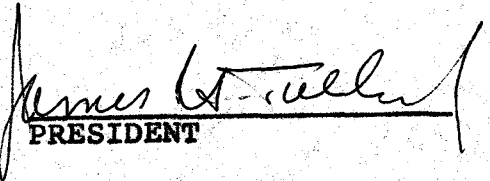
B. That the activities of petitioner, Albert Rosenbloom, on behalf of George Noble during 1969, 1970 and 1971, constituted the carrying on of an unincorporated business; thus, the net income derived therefrom of \$15,324.96 in 1969, \$18,310.33 in 1970 and \$24,349.71 in 1971 was subject to unincorporated business tax, in accordance with the meaning and intent of section 703 of the Tax Law.

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