

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS ROSENTHAL

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) ~~XXXX Period(s)~~ :
1967, 1968, 1969 and 1970

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 Louis Rosenthal
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Louis Rosenthal
59-55 47th Avenue
Woodside, NY 11377
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

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of

LOUIS ROSENTHAL

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
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Taxes under Article (X) 23 of the :
Tax Law for the Year(s) ~~1967, 1968, 1969 and 1970~~ :
1967, 1968, 1969 and 1970

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 24th day of January , 1979 , ~~she~~ served the within
Notice of Decision by (certified) mail upon I. Robert
Pollack, Esq. (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: I. Robert Pollack, Esq.
12 East 41st Street
New York, NY 10017

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
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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

Louis Rosenthal
59-55 47th Avenue
Woodside, NY 11377

Dear Mr. Rosenthal:

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 TAX COMMISSION

1. Petitioner, Louis Rosenthal, filed New York State resident returns for the years 1967 through 1970. He failed to file New York State unincorporated business tax returns for said years.

2. On May 2, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Louis Rosenthal, imposing additional personal income tax for 1970 of \$289.93. The Statement also imposed unincorporated business tax for the years 1967 through 1970 of \$2,008.39, on the grounds that petitioner's activities as an independent sales agent constituted the carrying on of an unincorporated business. Accordingly, the Income Tax Bureau issued a Notice of Deficiency dated September 25, 1972.

3. Petitioner did not protest the personal income tax portion of the deficiency.

4. Petitioner was a salesman for Ketcham and McDougall, Inc. (and their affiliated companies), located in New Jersey. He also represented four other companies during the years 1967 through 1970, from which he derived 24% to 30% of his total commission income.

5. Petitioner was restricted by Ketcham and McDougall, Inc. to selling in New Jersey, in Rockland County, New York, and in eastern Pennsylvania.

6. Petitioner was allowed to sell noncompeting lines of merchandise with the approval of Ketcham and McDougall, Inc.

7. Petitioner was required to periodically communicate with his principal's office, to attend sales meetings in New Jersey and to attend trade shows. He was provided with general office facilities (such as telephone service and desk space) in New Jersey.

8. Petitioner was paid on a commission basis. Payroll taxes were not withheld from his compensation, nor was he reimbursed for expenses incurred by him in the performance of his selling activities. He paid self-employment taxes and maintained a retirement ("Keogh") plan for the self-employed.

9. Petitioner, Louis Rosenthal, was addressed and known as "Rosenthal Gifts by Ketcham and McDougall, Inc., who regarded him as an independent contractor.

10. The firms that petitioner represented did not restrict or divide the amount of time and effort expended by him in the performance of his activities.

11. Petitioner did not maintain a home office or any other office within New York State. In addition, petitioner contended that no business of any type was ever conducted from his home. Although his business card showed his home address, the telephone number printed on the card was for the office of Ketcham and McDougall, Inc. in New Jersey.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Louis Rosenthal, from Ketcham and McDougall, Inc. during 1967, 1968, 1969 and 1970, together with the commissions received from other corporations, constituted income from his regular business and not compensation as an employee 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 Ketcham and McDougall, Inc. did not exercise the degree of control that is determinative of whether or not petitioner was an employee. (Matter of Hardy v. Murphy 289 N.Y.S. 2d 694)

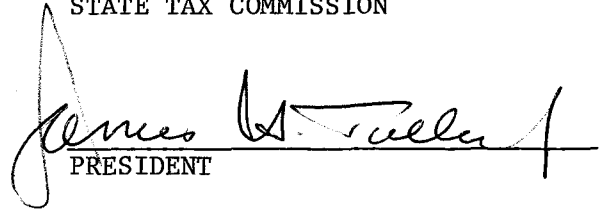
C. That petitioner did not sustain the burden of proof required to support his contention that the offices of Ketcham and McDougall, Inc. in New Jersey constituted a regular place of business; therefore, no allocation of business income is allowed.

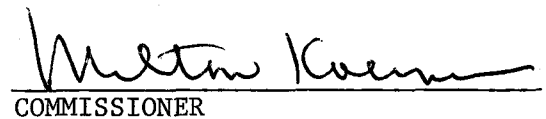
D. That the petition of Louis Rosenthal is denied and the Notice of Deficiency issued September 25, 1972 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York

January 24, 1979

STATE TAX COMMISSION


PRESIDENT

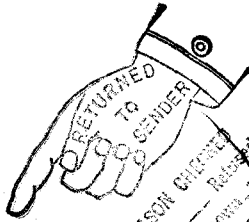

COMMISSIONER


COMMISSIONER

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



REASON RETURNED
Undelivered _____
Addressee unknown _____
Insufficient Address _____
No such street _____
No such office in state _____
Do not re-mail in this envelope

299482



~~Louis Rosenthal
59-55 41th Street
Woodside, NY 11377~~

BT



1/30/79



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

Louis Rosenthal
59-55 47th Avenue
Woodside, NY 11377

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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 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 :
LOUIS ROSENTHAL : 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. :
:

Petitioner, Louis Rosenthal, 59-55 47th Avenue, Woodside, New York 11377, 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. 13387).

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 January 26, 1977 at 9:15 A.M. Petitioner appeared by I. Robert Pollack, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Louis Senft, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a salesman during the years 1967 through 1970 was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Louis Rosenthal, filed New York State resident returns for the years 1967 through 1970. He failed to file New York State unincorporated business tax returns for said years.

2. On May 2, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Louis Rosenthal, imposing additional personal income tax for 1970 of \$289.93. The Statement also imposed unincorporated business tax for the years 1967 through 1970 of \$2,008.39, on the grounds that petitioner's activities as an independent sales agent constituted the carrying on of an unincorporated business. Accordingly, the Income Tax Bureau issued a Notice of Deficiency dated September 25, 1972.

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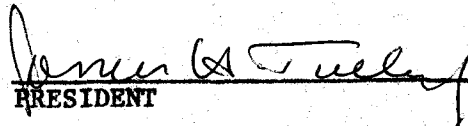
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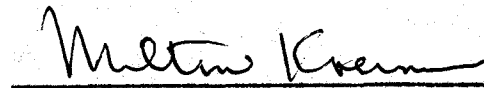
C. That petitioner did not sustain the burden of proof required to support his contention that the offices of Ketcham and McDougall, Inc. in New Jersey constituted a regular place of business; therefore, no allocation of business income is allowed.

D. That the petition of Louis Rosenthal is denied and the Notice of Deficiency issued September 25, 1972 is sustained, together with such interest as may be lawfully owing.

DATED: Albany, New York
January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER