

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Joseph J. Cardiello :

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 1973 & 1974. :

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Joseph J. Cardiello, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

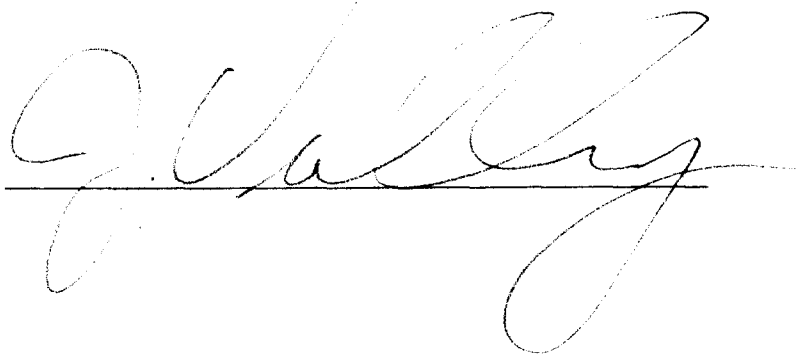
Joseph J. Cardiello  
76 Drake Lane  
Manhasset, NY 11030

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  
17th day of October, 1980.

Dorothy A. Bank



STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Joseph J. Cardiello :

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 1973 & 1974. :

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 17th day of October, 1980, he served the within notice of Decision by certified mail upon Eugene Stoler 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. Eugene Stoler  
Schimmel, Rochlin, Lipsky, Stoter & Co., PC  
516 Fifth Avenue  
New York, NY 10036

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  
17th day of October, 1980.

Lester A. Bank

J. Vredenburg

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

October 17, 1980

Joseph J. Cardiello  
76 Drake Lane  
Manhasset, NY 11030

Dear Mr. Cardiello:

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  
Eugene Stoler  
Schimmel, Rochlin, Lipsky, Stoter & Co., PC  
516 Fifth Avenue  
New York, NY 10036  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :

of :

JOSEPH J. CARDIELLO :

DECISION

for Redetermination of a Deficiency :  
or for Refund of Unincorporated :  
Business Tax under Article 23 of the :  
Tax Law for the Years 1973 and 1974. :

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Petitioner, Joseph J. Cardiello, 76 Drake Lane, Manhasset, New York 11030, 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 1973 and 1974 (File No. 22320).

A formal hearing was held before Gasper S. Fasullo, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 21, 1980 at 1:15 P.M. Petitioner appeared by Schimmel, Rochlin, Lipsky, Stoler & Co. (Eugene Stoler, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Angelo Scopellito, Esq., of counsel).

ISSUE

Whether petitioner's business activities as a salesman constituted the carrying on of an unincorporated business during the years 1973 and 1974.

FINDINGS OF FACT

1. Petitioner, Joseph J. Cardiello, filed New York State income tax returns for the years 1973 and 1974. He did not file any unincorporated business tax returns for those years.

2. On March 27, 1978, the Audit Division issued a Statement of Audit Changes and Notice of Deficiency against petitioner, imposing unincorporated business tax in the amount of \$3,877.34, plus interest in the sum of \$1,148.05, for a total of \$5,025.39 due for the year 1973, and the amount of \$2,490.95, plus interest in the sum of \$624.19, for a total of \$3,115.14 due for the year 1974, or a total unincorporated business tax and interest due for 1973 and 1974 of \$8,140.53. The Audit Division did so on the grounds the petitioner's activities as an outside salesman was subject to unincorporated business tax.

3. During the years 1973 and 1974, petitioner was an outside salesman selling ladies' body shirts for Rida Industries, Inc., a Manhattan, New York based firm. Petitioner had no written agreement with his principal and although he was free to represent other firms he chose not to do so.

4. Petitioner's customers were large department stores as well as small retail shops in and out of the New York Metropolitan area. Except in infrequent instances when his principal would assign an account to him, petitioner's itinerary for the day, to see and solicit old and new accounts, was prepared by him. Petitioner was paid on a commission basis.

5. During 1973, petitioner engaged the services of two outside salesmen who solicited accounts for and reported solely to petitioner at an office maintained by him at his home. During that year, petitioner paid to his said salesmen the sum of \$16,373.00 from commissions paid to petitioner by Rida.

6. Petitioner's principal did not exercise any substantial supervision or control over his sales techniques or over the time devoted to sales. The principal's interest was only as to results, except that the principal retained the right to refuse to fill an order if the customer failed to meet credit requirements.



7. Rida did not withhold taxes or social security from petitioner's compensation nor did it provide any employee benefits.

8. Petitioner's Federal Schedule C shows deductions for the years at issue for expenses such as rent, commissions, auto expenses, office supplies and expenses, telephone, out-of-town travel, entertainment, employee expenses, etc.

CONCLUSIONS OF LAW

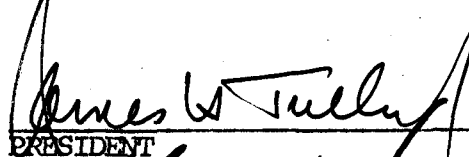
A. That the income received by petitioner from Rida Industries, Inc. during the years 1973 and 1974 constituted income from his regular business of selling ladies' body shirts. The aforesaid activities of petitioner during the said years constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law; thus, petitioner's income derived therefrom was subject to unincorporated business tax in accordance with section 701 of the Tax Law.

B. The petition of Joseph J. Cardiello is denied and the Statement of Audit Changes and Notice of Deficiency issued March 27, 1978 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 17 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER