

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Hans Henry Frydan :

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 1972 & 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 3rd day of October, 1980, he served the within notice of Decision by certified mail upon Hans Henry Frydan, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hans Henry Frydan  
Wellington G 333  
Century Village  
W. Palm Beach, FL 33409

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  
3rd day of October, 1980.

Robert Bank

J. Vredenburg

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of

Hans Henry Frydan :

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for Redetermination of a Deficiency or a Revision :  
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Unincorporated Business Tax :  
under Article 23 of the Tax Law  
for the Years 1972 & 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 3rd day of October, 1980, 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:

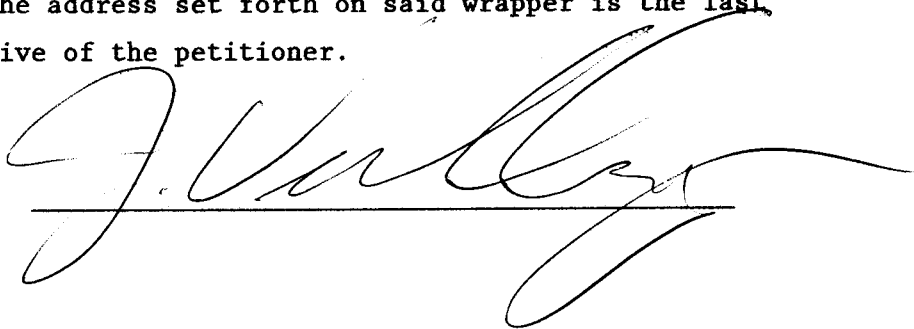
Mr. Bertrand Leopold  
18 Joseph St.  
New Hyde Park, NY 11040

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  
3rd day of October, 1980.

Robert Bank

  
\_\_\_\_\_

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

October 3, 1980

Hans Henry Frydan  
Wellington G 333  
Century Village  
W. Palm Beach, FL 33409

Dear Mr. Frydan:

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.  
New 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  
HANS HENRY FRYDAN  
for Redetermination of a Deficiency or  
for Refund of Unincorporated Business Tax :  
under Article 23 of the Tax Law for the  
Years 1972 and 1973. :

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DECISION

Petitioner, Hans Henry Frydan, Wellington G 333, Century Village, West Palm Beach, Florida 33409, 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 1972 and 1973 (File No. 16331).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 19, 1978 at 11:10 A.M. Petitioner appeared by Bertrand Leopold, Tax Accountant. The Audit Division appeared by Peter Crotty, Esq. (James Morris, Esq., of counsel).

ISSUE

Whether petitioner's activities as a sales representative constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Hans Henry Frydan and Ellen Frydan filed New York State combined income tax returns for 1972 and 1973. Petitioner did not file unincorporated business tax returns for said years.

2. On March 22, 1976, the Audit Division issued a Statement of Audit Changes against petitioner for 1972 and 1973. Said Statement indicated that commission income received by petitioner during the years in issue resulted from his activities as an independent agent and was thus subject to unincorporated

business tax. Due to a Federal audit, adjustments were made to petitioner's New York taxable income which resulted in additional personal income taxes due of \$211.44. Said amount was paid on April 6, 1976. Unincorporated business taxes of \$3,001.79 were also imposed. On July 26, 1976, a Notice of Deficiency was issued asserting personal income and unincorporated business taxes plus interest, for a total of \$3,842.25. Petitioner timely filed a petition with respect to the aforementioned Notice of Deficiency.

3. During 1972 and 1973 and prior thereto, petitioner was a sales representative for Caper Mates Corporation on a commission basis. When he began his association with Caper Mates Corporation in 1956, his principal withheld income taxes and social security taxes. In later years, his principal declined to do so because of alleged additional bookkeeping expenses. Petitioner was prohibited from acting as a sales representative for any other principal and during the years in issue, had no other principals. He was not permitted by his principal to maintain an office in connection with his sales activities. He was required to devote full time to the sale of the products of his sole principal.

4. During the years in issue, Caper Mates Corporation did not withhold income taxes or social security taxes on commissions paid. It was recommended to petitioner by his attorney that he be covered under a private pension ("Keogh") plan for self-employed persons. Petitioner used space in his apartment for his sales records and for storing samples. He did not employ any assistants.

5. Petitioner was required to account for all of his time while travelling and to submit his route plans for approval and instructions. When not travelling, he was required to report to his principal's showroom. Caper Mates Corporation decided to whom he could sell and at what terms. Petitioner was not permitted to deviate from the prices set by the principal and was told when he could

take a vacation. When he retired, his list of customers became the property of the principal.

CONCLUSIONS OF LAW

A. That Caper Mates Corporation exercised sufficient direction and control over petitioner's sales activities during 1972 and 1973 so as to create an employer-employee relationship within the meaning and intent of section 703(b) of the Tax Law.

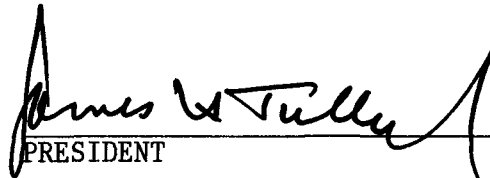
B. That petitioner's activities as a sales representative did not constitute the carrying on of an unincorporated business. Thus, the commission income he received during the years in issue was not subject to unincorporated business income tax.

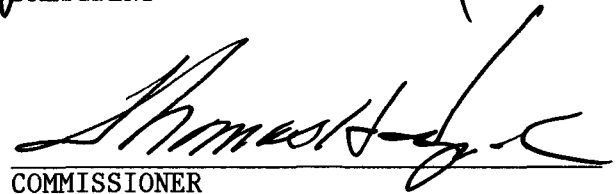
C. That the Notice of Deficiency with respect to the imposition of unincorporated business income tax for 1972 and 1973 was erroneous and is hereby cancelled.

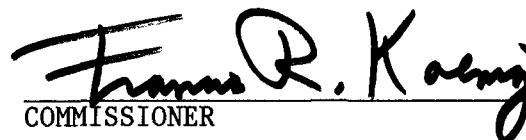
DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER

Reps copy returned

refused

10/29/80

TA-26 (4-76) 25M

STATE OF NEW YORK  
Department of Taxation and Finance  
TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N. Y. 12227

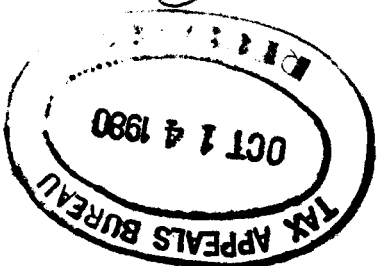
No. 473007

MAIL

RECEIVED  
Hestrand Leopold  
18 Joseph St.  
New Hyde Park, NY 11040  
10/29/80

*signed*

*Rep Copy  
Refused  
10/29/80  
CB*





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

October 3, 1980

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STATE OF NEW YORK

STATE TAX COMMISSION

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HANS HENRY FRYDAN

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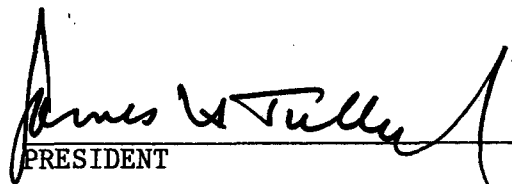
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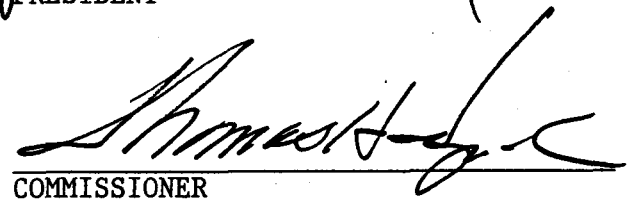
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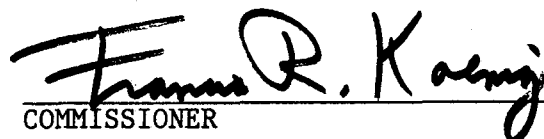
DATED: Albany, New York

OCT 03 1980

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER