

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Eugene & Angela Carraro :

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 Year 1970. :

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 20th day of February, 1981, he served the within notice of Decision by certified mail upon Eugene & Angela Carraro, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Eugene & Angela Carraro  
107 Deepwood Rd.  
Roslyn Heights, NY 11577

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  
20th day of February, 1981.

Gennie A. Hagelund

J. Vredenburg

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

February 20, 1981

Eugene & Angela Carraro  
107 Deepwood Rd.  
Roslyn Heights, NY 11577

Dear Mr. & Mrs. Carraro:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
EUGENE CARRARO and ANGELA CARRARO	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Year 1970.	:	

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Petitioners, Eugene Carraro and Angela Carraro, 107 Deepwood Road, Roslyn Heights, New York 11577, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1970 (File No. 17862).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 7, 1980 at 9:15 A.M. Petitioner Eugene Carraro appeared with Samuel Cutler, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the income derived from petitioner Eugene Carraro's activities as a salesman during the year 1970 is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioners timely filed a joint New York State Income Tax Resident Return for the year 1970 which reported business income of \$40,011.32 from Eugene Carraro's activities as a commission salesman. An unincorporated business tax return was not filed for said year.

2. On September 24, 1973 a Notice of Deficiency was issued against petitioners for unincorporated business tax of \$1,650.62, plus penalty [pursuant

to sections 685(a)(1) and (a)(2)] and interest. Said deficiency is based on the grounds that the income generated from petitioner's activities as a salesman was subject to unincorporated business tax.

3. During the year 1970, petitioner Eugene Carraro received commissions from three separate principals. No Federal, State, City or Social Security taxes were withheld from his compensation by the principals.

4. Petitioner Eugene Carraro's assigned territory included metropolitan New York and parts of New Jersey. Expenses incurred by him as the result of his selling activities were not reimbursed by his principals. None of the principals maintained offices in New York State and, therefore, he worked out of his home in Roslyn Heights, New York.

5. All sales orders taken by petitioner Eugene Carraro were subject to the approval of his principals. The price structure, delivery of products and extension of credit was handled solely by the three principals. He was occasionally instructed by his principals to service specific accounts, however, for the most part, he set his own itinerary.

6. Services were performed simultaneously for all three principals with no clear division of time between the firms. The principals did not instruct petitioner Eugene Carraro as to the methods to be employed in his selling activities as they were interested solely in the results achieved.

7. Petitioner Angela Carraro was not actively engaged in her husband's selling activities.

8. Petitioner Eugene Carraro relied on the advise of his accountant that he was not subject to unincorporated business tax and, for this reason, no unincorporated business tax return was filed.

CONCLUSIONS OF LAW

A. That petitioner, Eugene Carraro's, activities as a salesman during the year 1970 constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law. That the income generated from these activities is subject to the imposition of unincorporated business tax pursuant to section 701 of the Tax Law.

B. That petitioner Angela Carraro was not involved in her husband's business and, therefore, her name is to be removed from the Notice of Deficiency dated September 24, 1973.

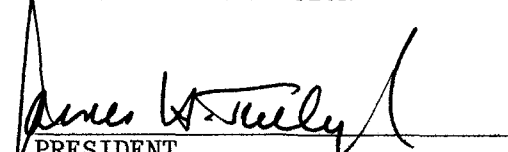
C. That petitioners' failure to file a 1970 unincorporated business tax return and pay the tax was due to reasonable cause and not willful neglect and, accordingly, all penalties are cancelled.

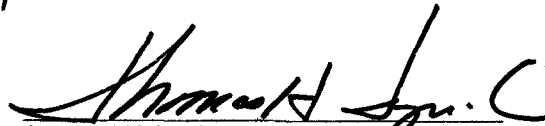
D. That the petition of Eugene Carraro and Angela Carraro is granted to the extent indicated in Conclusions of Law "B" and "C" and that, except as so granted, is in all other respects denied.


DATED: Albany, New York

FEB 20 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER