

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Sanford Fineman :  
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. :

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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 25th day of September, 1981, he served the within notice of Decision by certified mail upon Sanford Fineman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sanford Fineman  
3001 Hewlett Ave.  
Merrick, NY 11566

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  
25th day of September, 1981.

*Annie A. Hagelund*

*J. Vredenburg*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
Sanford Fineman :

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 25th day of September, 1981, 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:

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  
25th day of September, 1981.

*James A. Hagelund*

*J. Vredenburg*

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

September 25, 1981

Sanford Fineman  
3001 Hewlett Ave.  
Merrick, NY 11566

Dear Mr. Fineman:

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  
SANFORD FINEMAN  
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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DECISION

Petitioner, Sanford Fineman, 3001 Hewlett Avenue, Merrick, New York 11566, 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. 13178).

A formal hearing was held before Archibald F. Robertson, Jr., Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 3, 1978 at 9:45 A.M. Petitioner appeared by Bertrand Leopold, Tax Accountant. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether petitioner, a salesman hired by three independent principals on a commission basis, was engaged as an independent contractor and not as an employee for 1970, thereby incurring liability under Article 23 of the Tax Law for unincorporated business tax for 1970.

II. Whether petitioner's New Jersey office qualified as a bona fide regular place of business outside New York State within the meaning of section 707(a) of the Tax Law, thereby permitting petitioner to allocate a portion of his 1970 income outside New York, when petitioner paid no rent or utilities,

owned no furniture or fixtures, and filed no gross business tax return with the State of New Jersey.

FINDINGS OF FACT

1. Petitioner, Sanford Fineman, a resident of Merrick, New York, was independently engaged as a salesman during the period herein involved by three unrelated principals, Little Miss Dune Deck ("Dune Deck"), Manny Crosney ("Crosney") and Supak and Sons ("Supak").

2. Petitioner was compensated on a straight commission basis. In 1970, these commissions amounted to \$28,000 from Supak, \$12,000 from Dune Deck, and \$6,000 from Crosney.

3. Petitioner's territory was controlled by his principals and was confined to New York State and to parts of northern New Jersey.

4. Petitioner's principals retained the right to accept or reject orders, but exercised no other significant control over his day-to-day activities.

5. Petitioner could take days off without notification or permission and his daily itinerary was a matter of his own discretion.

6. Dune Deck, Supak and Crosney had no arrangement among themselves as to the division of petitioner's labor and time.

7. Dune Deck, Supak and Crosney deducted neither social security nor withholding taxes from petitioner's commissions during the period herein involved.

8. Petitioner's principals did not reimburse him for any of his expenses, nor did they allow him to keep his samples.

9. Petitioner was not covered by unemployment insurance, disability insurance, or workmen's compensation during the period herein involved.

10. Petitioner paid unincorporated business tax for 1969 and 1971, but not for 1970.

11. On August 26, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner in the amount of \$1,244.38 and penalty of \$535.09 under section 685(a)(1) and (2) of the Tax Law, plus interest.

12. Petitioner tended a store outlet for Supak in New Jersey for part of 1970. The store was run by two Supak employees under petitioner's ostensible control. On the days that petitioner went to the store, he would stay for two hours or so and then leave to cover this territory. Petitioner was not required to be at the store on any particular day or for any particular length of time.

13. Petitioner's compensation for tending Supak's store was the use of office space there. Petitioner paid no rent for this office and no utility bills. He owned neither the furnishings nor the fixtures. No signs existed on the premises to indicate that petitioner was carrying on any business there.

14. Petitioner neither registered with the State of New Jersey as a person doing business there in 1970, nor filed any gross business tax return with that State for that year.

#### CONCLUSIONS OF LAW

A. That petitioner, Sanford Fineman, was engaged as an independent contractor carrying on the business of salesman throughout 1970.

B. That petitioner is liable for unincorporated business tax for 1970 under Article 23 of the Tax Law.

C. That petitioner's use of a New Jersey office wherein he placed no signs, paid neither rent nor utility charges, and owned neither furnishings nor fixtures, coupled with his failure to register or file with the State of New

Jersey as one doing business in that state, does not qualify petitioner as having a regular place of business outside New York State for his unincorporated business.

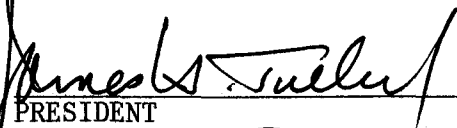
D. That petitioner may not, under section 707 of the Tax Law, allocate any portion of his income from 1970 outside New York State.

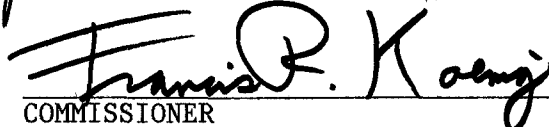
E. That the petition of Sanford Fineman is denied.


DATED: Albany, New York

SEP 25 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER