

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Raymond Kasendorf :
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 1966 - 1968. :

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 11th day of December, 1981, he served the within notice of Decision by certified mail upon Raymond Kasendorf, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

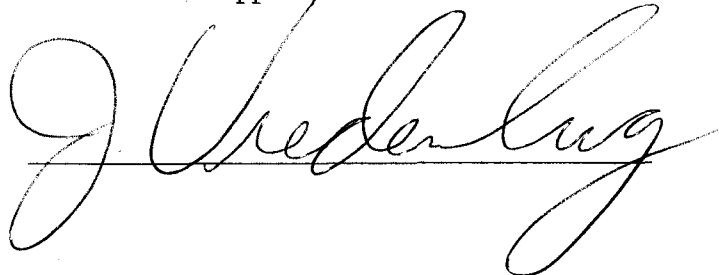
Raymond Kasendorf
2671 Emory Dr. E.
W. Palm Beach, FL 33406

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
11th day of December, 1981.





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

December 11, 1981

Raymond Kasendorf
2671 Emory Dr. E.
W. Palm Beach, FL 33406

Dear Mr. Kasendorf:

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

In the Matter of the Petition	:	
of	:	
RAYMOND KASENDORF	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1966, 1967 and 1968.	:	

Petitioner, Raymond Kasendorf, 2671 Emory Drive East, West Palm Beach, Florida 33406, 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 1966, 1967 and 1968 (File No. 13993).

A formal hearing was held before Edward Goodell, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1977 at 9:35 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (James J. Morris, Esq., of counsel).

ISSUE

Whether petitioner, an independent contractor residing in New York State, was so engaged in business outside New York State, as to entitle him to allocate part of his income to non-New York sources, pursuant to section 707 of the Tax Law.

FINDINGS OF FACT

1. During 1966, 1967 and 1968, petitioner, Raymond Kasendorf, was a resident of New York State.
2. On February 24, 1976, the Income Tax Bureau, disallowing any allocation of business income to sources outside New York State, issued a Statement of

Audit Changes and a Notice of Deficiency against petitioner for 1966, 1967 and 1968 for \$3,985.26, plus interest of \$1,837.64, for a total of \$5,822.90.

3. During the years at issue, petitioner was a self-employed traveling salesman, selling merchandise on a commission basis on behalf of eleven manufacturers or wholesalers of merchandise. He sold to post exchanges located on military installations in all of the states east of the Mississippi River, including New York State.

4. During the period at issue, said eleven manufacturers or wholesalers (namely, McGregor-Doniger, Inc.; Stedman Manufacturing Co.; Buxton, Creighton, Saco, Pauling Co.; Bates Shoe Co.; Mr. Incorporated; M & R Incorporated; Tip-top and Lippman) were manufacturers and sellers of a variety of merchandise, including sportswear, men's underwear, leather goods, uniforms, hosiery and jewelry. All of this merchandise was sold by petitioner on their behalf to post exchanges located as aforesaid.

5. (a) During 1966, 1967 and 1968, there were about 90 post exchanges in the states east of the Mississippi River, approximately 30 of which were located in the area in and around Washington, D.C., and northern Virginia.

(b) During the aforesaid period, most of the business conducted by petitioner with post exchanges was transacted with those in and around Washington, D.C., and northern Virginia.

(c) During said period, approximately 40 percent to 50 percent of petitioner's time was devoted to the conduct of said business in the Washington, D.C. - northern Virginia area and less than 10 percent to the conduct of business in New York State. The balance of his time in the conduct of said business was spent traveling to various post exchanges in states and areas east of the Mississippi River, other than Washington, D.C., northern Virginia and New York State.

6. During 1966, 1967 and 1968, approximately 90 percent of petitioner's business was done outside of New York State.

7. During the period at issue, petitioner maintained offices and showrooms in Arlington, Virginia, and Alexandria, Virginia, as hereafter set forth.

8. (a) During 1966, 1967 and until on or about October 1, 1968, petitioner was a sub-tenant of one Stanley Chaleff, a cousin of petitioner, who was the tenant of a five-room apartment in an apartment house located at 4600 South Flower Mile Run Drive, Arlington, Virginia. Said apartment contained three bedrooms.

(b) During the period set forth in subdivision (a) of this Finding of Fact, petitioner lived in said apartment while he was engaged in the conduct of business with post exchanges in or around the Washington, D.C., and northern Virginia areas. In addition, he used one of said bedrooms exclusively as an office and showroom to transact business during said period.

(c) Pursuant to oral agreement with said Stanley Chaleff, petitioner paid rent to him during 1966 for the use of the space he occupied. During 1967, he paid Mr. Chaleff a share of the commissions received by petitioner for the use of the space.

9. The aforesaid bedroom used as an office and showroom by petitioner contained a desk, a file cabinet, pipe racks and shelves, for the display of samples of merchandise to buyers representing post exchanges in and around Washington, D.C., and northern Virginia. Said room was used for the storage of orders and invoices regarding the purchases of said merchandise and sometimes used for the writing of orders during the period described in Finding of Fact "8(a)". Occasionally customers would visit the office or apartment to see the merchandise and make their selections. Records for years prior to 1966 were stored in the garage of petitioner's home in Jericho, Long Island, New York.

10. On or about January 29, 1969, petitioner and his brother, Arnold Kasendorf (then associated with the petitioner in the aforesaid business), signed a lease as tenants with Brookside Apts., as landlord, for a five-room apartment (including three bedrooms), in an apartment house located at 601 Four Mile Rd., Alexandria, Virginia, for a term of one year beginning September 1, 1968 and ending August 31, 1969.

11. Commencing on or about October 1, 1968 and continuing until the end of 1968, petitioner lived in said apartment in Alexandria, Virginia, while engaged in the conduct of business with post exchanges in and around Washington, D.C., and northern Virginia. He used one of the bedrooms in said apartment exclusively as an office and showroom to transact business during said period. Said office and showroom were furnished and used in substantially the same way as the bedroom used as the office and showroom in the apartment described in Finding of Fact "9", above.

12. Petitioner submitted checks as evidence of the payment of rent. The checks for 1966 were for the period September 25, 1966 through December 23, 1966. They were for the same amount except for one check. The checks were paid at irregular intervals. No checks were submitted for the period prior to September 25, 1966. Further, the first check was marked "services rendered" and the last check was marked "bonus". The checks submitted for 1967 were irregular in amount and time of payment. Petitioner testified that he paid his cousin a small percentage of his commissions for the use of the apartment. No checks were submitted for January, 1967 or for November, 1967. One check was marked "office space" and the remaining checks were marked with the name of the companies petitioner represented. No checks were submitted for 1968.

CONCLUSIONS OF LAW

A. That if an unincorporated business is carried on both within and without this state there shall be allocated to this state a fair and equitable portion of the excess of its unincorporated business gross income over its unincorporated business deductions. If the unincorporated business has no regular place of business outside this state, all such excess shall be allocated to this state, section 707(a) of the Tax Law.

B. That the offices outside this State were used sometimes for order writing and occasionally visited by customers during the years at issue. That the offices maintained by petitioner, Raymond Kasendorf, were not used with sufficient regularity to constitute a regular place of business outside New York State within the meaning and intent of section 705(a) of the Tax Law.

C. That the petition of Raymond Kasendorf is denied and the Notice of Deficiency dated February 24, 1976 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 11 1981

I dissent -

James G. Tetter
PRESIDENT

Mark J. ...
COMMISSIONER

Francis R. Koenig
COMMISSIONER

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

December 11, 1981

Raymond Kasendorf
2671 Emory Dr. E.
W. Palm Beach, FL 33406

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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

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

UNFILED

DATE

12-15-81

1ST NOTICE

2ND NOTICE

RETURN

RTIFIED

P 230 841 859

MAIL

Edward

Edward

627

Raymond K. Eschendorf

RECEIVED
JAN 11 1982
TAXES BUREAU

Raymond K. Eschendorf
2674 Emory Dr. #33
W. Palm Beach, FL 33411

[Handwritten signature]

MAILED 71 272137N1 12/21/81

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

W. Eschendorf

REFUSED!

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
RAYMOND KASENDORF
for Redetermination of a Deficiency or
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the
Years 1966, 1967 and 1968. :

DECISION

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C. That the petition of Raymond Kasendorf is denied and the Notice of Deficiency dated February 24, 1976 is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

DEC 11 1981

2 Present -

James G. Sullivan

PRESIDENT

Mark J. [unclear]

COMMISSIONER

Frank R. Koenig

COMMISSIONER