

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Hyman Esses

:

:

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 1968 - 1971.

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 23rd day of Arpil, 1982, he served the within notice of Decision by certified mail upon Hyman Esses, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Hyman Esses
1215 East 22nd St.
Brooklyn, NY 11210

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
23rd day of Arpil, 1982.

Annice A. Haglund

Jay Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

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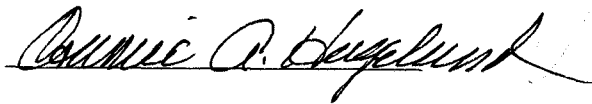
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 23rd day of April, 1982, he served the within notice of Decision by certified mail upon Michael Dinkes the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

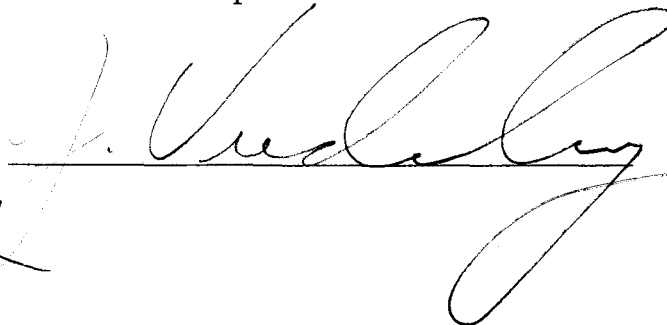
Michael Dinkes
Israeloff, Trattner & Co., P.C.
11 Sunrise Plaza
Valley Stream, NY 11581

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
23rd day of April, 1982.





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

April 23, 1982

Hyman Esses
1215 East 22nd St.
Brooklyn, NY 11210

Dear Mr. Esses:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Michael Dinkes
Israeloff, Trattner & Co., P.C.
11 Sunrise Plaza
Valley Stream, NY 11581
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
HYMAN ESSES	:	DECISION
for Redetermination of Deficiencies or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1968,	:	
1969, 1970 and 1971.	:	

Petitioner, Hyman Esses, 1215 East 22nd Street, Brooklyn, New York 11210, filed petitions for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969, 1970 and 1971 (File No. 00359).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 20, 1978 at 2:45 P.M. Petitioner appeared by Israeloff, Trattner & Co., P.C. (Michael Dinkes, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether petitioner, a salesman, was an employee who was not subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Hyman Esses, timely filed New York State income tax returns for 1968, 1969, 1970 and 1971. On said returns Mr. Esses reported business income as a salesman. He did not file any unincorporated business tax returns for said years.
2. On December 28, 1973 a Notice of Deficiency was issued against petitioner for 1968, 1969 and 1970 imposing unincorporated business tax of \$2,039.67, plus

interest of \$439.57, for a total due of \$2,479.24. Attached to the Notice of Deficiency was a Statement of Audit Changes which stated that the income from petitioner's activities as a salesman was subject to the unincorporated business tax.

3. On April 11, 1975 a Notice of Deficiency was issued against petitioner for 1971 imposing unincorporated business tax of \$726.83, plus interest of \$130.42, for a total due of \$857.25. Attached to the Notice of Deficiency was a Statement of Audit Changes which stated in part that petitioner's activities were subject to the unincorporated business tax.

4. During the years 1968 through 1971, Mr. Esses was a salesman for Richlyn Laboratories, Inc., (Richlyn) a manufacturer of generic drugs. He also was a salesman for Medical Chemical Corporation since 1968 and Hypo-Med, Incorporated since 1969.

5. Petitioner, Hyman Esses, testimony related primarily to years when his sales activities were involved with only one corporation (Richlyn). His testimony in reference to his activities with the other two corporations was limited.

6. Mr. Esses claimed that his expenses were reimbursed by Richlyn. However, no evidence was submitted to substantiate the claim.

7. Richlyn issued wage and tax statements to him. However, the statements listed his income as other compensation and no deductions for Federal income taxes, F.I.C.A. taxes or state income taxes were indicated.

8. Richlyn did cover Mr. Esses by a company retirement plan. He paid his own Social Security tax and he had a self-paid retirement plan.

9. No breakdown was submitted to show the gross income and expenses attributable to each corporation. There was no agreement as to division of his

time or effort among the corporations. He sold simultaneously for them. He had no set hours to work.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Hyman Esses, during 1968 through 1971 constituted income from his regular business of selling for the three corporations and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with section 703(b) of the Tax Law.

B. That petitioner, Hyman Esses, activities as a salesman constituted the carrying on of an unincorporated business tax within the meaning and intent of section 703(a) of the Tax Law and he is subject to the unincorporated business tax imposed by section 701 of the Tax Law.

C. That the petitions of Hyman Esses are denied and the Notice of Deficiency dated December 28, 1973 and the Notice of Deficiency dated April 11, 1975 are sustained.

DATED: Albany, New York

APR 23 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER