

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Charles Gallic :  
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 1974. :  
\_\_\_\_\_ :

State of New York  
County of Albany

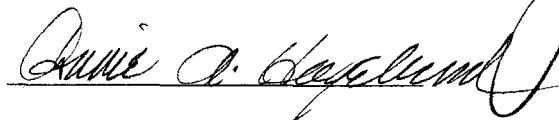
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 5th day of May, 1982, he served the within notice of Decision by certified mail upon Charles Gallic, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

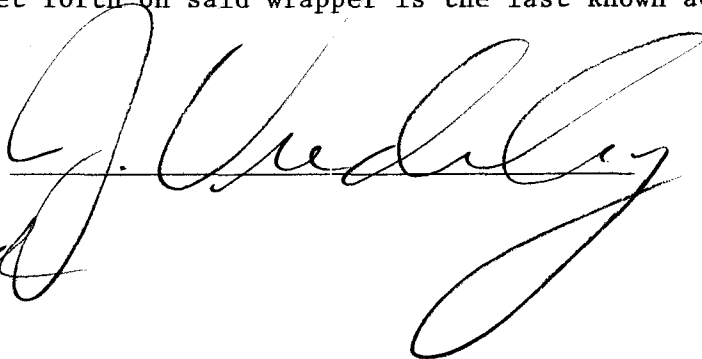
Charles Gallic  
Wolver Hollow Rd.  
Glen Head, NY 11545

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  
5th day of May, 1982.

  
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STATE OF NEW YORK  
STATE TAX COMMISSION

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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 5th day of May, 1982, he served the within notice of Decision by certified mail upon Leonard J. Kaiser the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Leonard J. Kaiser  
75 Jackson Ave.  
Syosset, NY 11791

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  
5th day of May, 1982.

*William A. Hegland*

*J. Vredenburg*

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

May 5, 1982

Charles Gallic  
Wolver Hollow Rd.  
Glen Head, NY 11545

Dear Mr. Gallic:

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  
Leonard J. Kaiser  
75 Jackson Ave.  
Syosset, NY 11791  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
CHARLES GALLIC  
for Redetermination of a Deficiency or for  
Refund of Unincorporated Business Tax under  
Article 23 of the Tax Law for the Year 1974.

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DECISION

Petitioner, Charles Gallic, Wolver Hollow Road, Glen Head, New York 11545, 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 1974 (File No. 27024).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 28, 1981 at 1:15 P.M. Petitioner Charles Gallic appeared with Norman A. Senior, Esq. and Gilbert L. Perlman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Anna D. Colello, Esq., of counsel).

ISSUE

Whether petitioner was an independent contractor or an employee in connection with his activities on behalf of Rielly Company, Inc. during 1974.

FINDINGS OF FACT

1. Petitioner, Charles Gallic, filed a New York State Income Tax Resident Return for 1974, on which he reported his occupation to be a "consultant". He did not file an unincorporated business tax return for said year.

2. On July 11, 1978 the Audit Division issued a Statement of Audit Changes against the petitioner on the grounds that he was an independent agent carrying on an unincorporated business. Accordingly, on October 13, 1978 the

Audit Division issued a Notice of Deficiency for 1974 imposing unincorporated business tax of \$1,177.72, plus interest of \$349.96, for a total due of \$1,527.68.

3. During the year in issue petitioner was a salesman and stylist for Rielly Company Inc., a manufacturer of men's and women's sportswear. He worked solely and exclusively for Rielly Company Inc. under the supervision and direction of its Vice-President and chief operating officer, G. Gerard Rielly. Petitioner was prohibited from representing any other company. Rielly Company Inc. could discharge the petitioner "at will".

4. The petitioner was directed by Rielly Company Inc. as to what customers he could or could not call upon. The company set the price to be charged for the goods sold by petitioner. All sales made by petitioner required written approval by Rielly Company Inc. Petitioner was in daily telephone communication with his supervisor and met directly with him at least once a week. The manner in which customers would be approached to purchase goods was solely within Rielly Company Inc.'s control.

5. Rielly Company Inc. provided workman's compensation for the petitioner. He was also enrolled in the company's Blue Cross/Blue Shield and major medical plans.

6. Petitioner was indirectly "reimbursed" for expenses incurred on behalf of Rielly Company Inc. by receiving a commission at twice the rate than prevailing in the industry. The additional commission, according to company, was paid to petitioner with the understanding that he would bear all the expenses incurred by him. This procedure set up by the company also helped the company with its cash flow problem.

7. Rielly Company Inc.'s plant and main office was located in Valatie, New York which was approximately 150 miles from New York City and the petitioner's

residence. Rielly Company Inc. provided the petitioner with office space but no clerical or secretarial assistance in New York City. Petitioner was required to be at Rielly Company Inc.'s New York office to pick up telephone messages and mail, meet salespeople, purchase piece goods, trim, buttons and other accessories, and to attend weekly styling meetings. Petitioner utilized an area of his home to prepare reports, perform clerical activities and to occasionally receive samples from his principal. Rielly Company Inc. supplied the petitioner with stationery, forms, samples and other equipment.

8. Petitioner retained a part-time clerk/secretary to assist in the performance of his duties at his home office. The petitioner deducted on Federal Form 1040 Schedule "C" \$2,200.00 for the cost of his home office and \$4,193.00 for secretarial help. The petitioner also deducted under "cost of goods sold" the cost of buying samples of competitors goods that he used in his styling work for Rielly Company Inc.

9. Petitioner received a Form 1099 rather than a W-2 Form from Rielly Company Inc. No social security or income taxes were withheld from his compensation.

#### CONCLUSIONS OF LAW

A. That Rielly Company exercised sufficient direction and control over petitioner's sales activities during 1974 so as to create an employee-employer relationship within the meaning and intent of section 703(b) of the Tax Law.

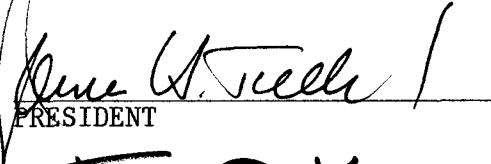
B. That petitioner's activities as a salesman and stylist (consultant) did not constitute the carrying on of an unincorporated business. Thus, the commission income he received during the year in issue was not subject to unincorporated business income tax.

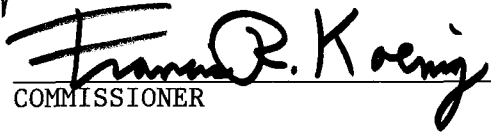
C. That the petition of Charles Gallic is granted and the Notice of Deficiency dated October 13, 1978 was erroneous and is cancelled.

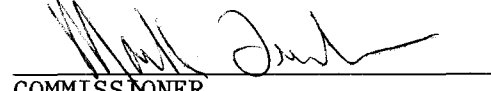
DATED: Albany, New York

MAY 05 1982

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER