

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JONATHAN FINN

:
:
:
AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1961, 1963, 1964 and 1965

State of New York
County of Albany

Rae Zimmerman being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of April , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Jonathan Finn

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jonathan Finn
44 Gramercy Park North
New York, New York 10010

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

4th day of April , 1972.

Martha Funnell

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

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JONATHAN FINN

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For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1961, 1963, 1964 and 1965

State of New York
County of Albany

Rae Zimmerman, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 4th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon S. Howard Apfel,

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: S. Howard Apfel, C.P.A.
501 Fifth Avenue
New York, N.Y. 10017

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

4th day of April, 1972.

Martha Furman

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
April 4, 1972

Jonathan Pinn
44 Gramercy Park North
New York, New York 10010

Please take notice of the **Decision** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
690 and 722 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Paul B. Coburn

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
JONATHAN FINN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law	:	
for the Years 1961, 1963, 1964 and	:	
1965.	:	

Petitioner, Jonathan Finn, has filed petitions for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1961, 1963, 1964 and 1965. (File Nos. 1-8289296 and 46757264). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York for October 21, 1971, at 10:45 A.M. After Notice of Formal Hearing, petitioner's representative, in writing, waived a formal hearing and requested that the State Tax Commission decide the case on the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did petitioner, Jonathan Finn's, business activities on behalf of Jack Borgenicht, Inc. and Ruder & Finn, Inc. during the years 1961, 1963, 1964 and 1965 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Jonathan Finn, filed New York State income tax resident returns for the years 1961, 1963, 1964 and 1965. He did not file New York State unincorporated business tax returns for said years.

2. On November 27, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Jonathan Finn, imposing unincorporated business tax upon his business income for the years 1963, 1964 and 1965 and accordingly issued a Notice of Deficiency in the sum of \$483.87.

3. On December 15, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Jonathan Finn, imposing unincorporated business tax upon his adjusted business profits for the year 1961. It also imposed additional personal income tax based upon the disallowance of certain deductions by the Internal Revenue Service. The disallowance of said deductions was conceded by petitioner. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$797.26.

4. Petitioner, Jonathan Finn, has failed to submit any documentary or other substantial evidence to prove that the income received by him during the years 1961, 1963, 1964 and 1965 from Jack Borgenicht, Inc. and Ruder & Finn, Inc. did not constitute income from his regular business of selling products for them. He has failed to submit any proof as to the degree to which his activities were subject to the direction and control of the firms that he represented.

5. Petitioner, Jonathan Finn, listed his occupation as "salesman" on his 1961 federal income tax return and on his 1963, 1964 and 1965 New York State income tax returns.

6. Ruder & Finn, Inc. deducted Federal and New York State income taxes and social security tax from the compensation paid to petitioner, Jonathan Finn, during the years 1961, 1963, 1964 and 1965. This compensation represented approximately one half of his gross receipts for said years.

7. Petitioner, Jonathan Finn, filed a Schedule "C" as part of his 1961 federal income tax return wherein he deducted expenses incurred in connection with his business activities.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Jonathan Finn, from Jack Borgenicht, Inc. and Ruder & Finn, Inc. during the years 1961, 1963, 1964 and 1965 constituted income from a regular business conducted by him and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Jonathan Finn, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petitions of Jonathan Finn are denied and the notices of deficiency issued November 27, 1967 and December 15, 1967, are sustained.

DATED: Albany, New York

April 4, 1972

STATE TAX COMMISSION

Thomas J. Sullivan
COMMISSIONER

Charles H. Marley
COMMISSIONER

William K. Green
COMMISSIONER