

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
FLORENCE FRIEDMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income & Unincorporated Business :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year(s) or Period(s) 1969, :  
1970 and 1971.

State of New York  
County of Albany

MARYLOU SAMUELS, 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 1st day of December, 1976, she served the within  
Notice of Decision by (certified) mail upon Florence Friedman

(~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mrs. Florence Friedman  
303 Beverly Road  
Brooklyn, New York 11218

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

1st day of December, 1976.

Marylou Samuels

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

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FLORENCE FRIEDMAN

AFFIDAVIT OF MAILING

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Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year(s) or ~~Period(s)~~ 1969, :  
1970 and 1971

State of New York  
County of Albany

MARYLOU SAMUELS, 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 1st day of December, 1976, she served the within  
Notice of Decision by (certified) mail upon Stanley Ellenbogen  
(representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Stanley Ellenbogen  
225 West 34th Street  
New York, New York 10001  
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

1st day of December, 1976.

Janet Back

Marylou Samuels



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

December 1, 1976

TELEPHONE: (518) 457-3850

Mrs. Florence Friedman  
303 Beverly Road  
Brooklyn, New York 11218

Dear Mrs. Friedman:

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

Please take further notice that pursuant to  
Section(s) **690 & 722** of the Tax Law, any  
proceeding in court to review an adverse deci-  
sion must be commenced within **4 months**  
from the date of this notice.

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

Very truly yours,

Frank J. Puccia  
Supervisor of  
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

FLORENCE FRIEDMAN

DECISION

for a Redetermination of a Deficiency or  
for Refund of Personal Income and Unin-  
corporated Business Taxes under Articles  
22 and 23 of the Tax Law for the Years  
1969, 1970 and 1971.

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Petitioner, Florence Friedman, residing at 303 Beverly Road, Brooklyn, New York 11218, has filed a petition for re-determination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1969, 1970 and 1971. (File No. 1-76550488).

A small claims hearing was held before Joseph Marcus, Hearing Officer, on July 15, 1976 at the offices of the State Tax Commission, Department of Taxation and Finance, Two World Trade Center, Room 65-31, 65th Floor, New York, New York. The petitioner was represented by Stanley Ellenbogen. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq. of counsel).

ISSUE

Did the petitioner's activities as a salesperson during the years 1969, 1970 and 1971 constitute the carrying on of an unincorporated business in such years?

FINDINGS OF FACT

1. Petitioner, Florence Friedman, filed New York State personal income tax returns for the years 1969, 1970 and 1971 (IT-201). She did not file New York State unincorporated business tax returns for those years.

2. On May 19, 1975, the Income Tax Bureau issued a Statement of Audit Changes, against the petitioner, imposing unincorporated business taxes in the sum of \$887.98 upon the income received by her from her activities as a salesperson during the years under review. It also imposed a penalty under section 685(a)(1) and (a)(2) of the Tax Law for failure to file New York State unincorporated business tax returns and to pay the unincorporated business tax due thereon for the said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency covering the unincorporated business tax, penalty and interest. The documents included a deficiency of personal income tax for the year 1970 which was not contested.

3. During the years in question, petitioner received income in the form of a salary from Antico Manufacturing Company, Inc.

from which Federal income tax was withheld. New York State income tax was withheld in 1969 only. Her services for Antico were clerical.

4. The other source of income of the petitioner was Shelly Manufacturing Corporation in the form of commissions. In an affidavit dated August 23, 1976 which the petitioner was required to submit to the State Tax Commission, the petitioner stated that the services she performed for Shelly Manufacturing were in the "nature of sales activities." There was no formal agreement between petitioner and Shelly Manufacturing.

5. Petitioner's affidavit also stated that her services consisted of making telephone calls and having business meetings with customers of the company. All of her activities were under direct control of the company; she had no authority to take any independent action with respect to any of the accounts she serviced.

6. There was a common ownership of the two companies from which the petitioner received income for the years in question. The stockholders of both corporations were the same. Petitioner's son was the principal stockholder of both corporations; petitioner had a 48% interest in Antico.

7. Petitioner stated that Shelly Manufacturing Corporation sold all of its output to one customer and that petitioner's selling activities were directed toward the satisfaction of that one customer.

CONCLUSIONS OF LAW

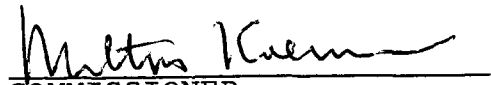
A. That the activities of petitioner as a salesperson for Shelly Manufacturing Corporation during the years 1969, 1970 and 1971 constituted services as an employee within the meaning and intent of section 703(b) of the Tax Law. At no time during the period under review did the petitioner seek or solicit accounts other than the one she serviced. She was at all times under the direct supervision and control of the management of Shelly Manufacturing Corporation.

B. That the Income Tax Bureau is directed to cancel the portion of Notice of Deficiency dated May 19, 1975 with respect to the computation of unincorporated business tax together with the interest and penalties related thereto, and, except as so granted, the petition in all other respects is denied.

DATED: Albany, New York  
December 1, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER