

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WILLIAM LOEB

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income and :
Unincorporated Business :
Taxes under Article(s) 22 & 23 of the :
Tax Law for the Year ~~(s) or Period(s)~~ 1966.:

State of New York
County of Albany

Catherine Steele, 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 13th day of September, 1976, she served the within Notice of Decision by (certified) mail upon William Loeb ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. William Loeb
205 West End Avenue
New York, New York 10023

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
13th day of September, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
WILLIAM LOEB : DECISION
for a Redetermination of a Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Year 1966. :

Petitioner, William Loeb, residing at 205 West End Avenue, New York, New York, has filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1966. (File No. 0-0001628). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the office of The State Tax Commission, 2 World Trade Center, New York, New York, on September 24, 1975, at 2:35 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Alexander Weiss, Esq. of Counsel).

ISSUES

- I. Whether petitioner, William Loeb, met his burden of proof as to the several personal income tax disallowances for the year 1966.
- II. Whether the activities of petitioner, William Loeb, as a carton salesman during the year 1966 were conducted sufficiently independent of direction or control so as to constitute the carrying on of an unincorporated business.
- III. Whether the activities of petitioner, William Loeb, as a carton salesman during the year 1966 constitute the practice of a profession.

IV. Whether petitioner, William Loeb, had reasonable cause for failure to file a New York State unincorporated business tax return for the year 1966.

FINDINGS OF FACT

1. Petitioner, William Loeb, and his wife, filed a New York State combined income tax return for the year 1966 but did not file a New York State unincorporated business tax return for that year.

2. On June 7, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, William Loeb, imposing unincorporated business tax in the amount of \$627.44 (plus penalty) upon the income received by him from his activities as a carton salesman during the year 1966. In addition, such Statement of Audit Changes showed a reduction of allowable business expenses in the sum of \$1,745.13, thereby resulting in additional personal income tax due of \$174.51.

3. Petitioner, William Loeb, was a carton salesman during the year 1966. He represented two corporations, one a manufacturer, the other a jobber, in the sale of corrugated cartons and other packaging. Each corporation knew he represented the other. He maintained an office in his home.

4. The corporations for whom petitioner, William Loeb, sold in 1966 did not exercise any substantial control, direction, or supervision over his sales activities and techniques, or over the time he devoted to sales. He deducted "business expenses" in the amount of \$5,074.20 in connection with his sales activities on his Federal income tax return for 1966. Both corporations withheld Federal and New York State income taxes

and social security taxes from the commissions paid to him for 1966; and both corporations covered him for unemployment, disability, and workmen's compensation, and health insurance for 1966. One of the two corporations reimbursed him a fixed amount for automobile expense.

5. Petitioner, William Loeb, was advised by his accountant that he was not subject to unincorporated business tax.

6. Petitioner, William Loeb, failed to submit any documentary or other substantial evidence to support claimed deductions and modifications for the year 1966 totaling \$1,745.13 in excess of the amount allowed as substantiated by the Income Tax Bureau.

CONCLUSIONS OF LAW

A. That the income received by petitioner, William Loeb, from the corporations he represented during the year 1966 constituted income from his regular business of selling cartons and other packaging and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of Tax Law § 703(b).

B. That the withholding of income and social security taxes and the providing to petitioner, William Loeb, of various kinds of insurance benefits, do not constitute such control, direction, or supervision which would bring petitioner within the purview of Tax Law § 703(b). See Hardy v. Murphy, 29 A.D. 2d 1038, 289 N.Y.S.2d 694 (3d Dept. 1968).

C. That the activities of petitioner, William Loeb, as a carton salesman during 1966 did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of Tax Law § 703(c).

D. That the aforesaid activities of petitioner, William Loeb, during 1966 constituted the carrying on of an unincorporated business, and his income therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of Tax Law § 703.

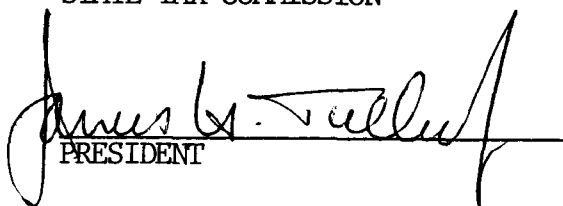
E. That petitioner, William Loeb, had reasonable cause for failure to file a New York State unincorporated business tax return for the year 1966 and, therefore, the penalty imposed pursuant to Tax Law § 685(a) is waived.

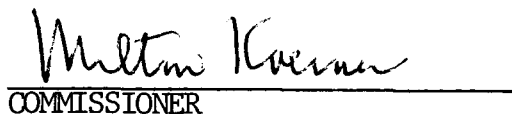
F. That petitioner, William Loeb, has failed to prove that he had deductions and modifications for the year 1966 in excess of the amount allowed as substantiated by the Income Tax Bureau.

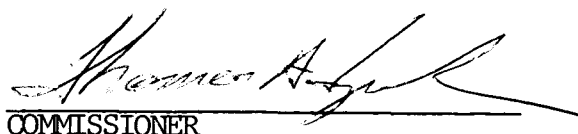
G. That the petition of William Loeb is granted to the extent of cancelling the penalty imposed pursuant to section 685(g) of the Tax Law, that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued August 26, 1968, and that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
September 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER