

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY LITWIN & EVELYN LITWIN

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)~~
1968, 1969, 1971 - 1973

State of New York
County of Albany

Marsina Donnini, 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 26th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Harry and Evelyn Litwin (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed

as follows: Mr. and Mrs. Harry Litwin
619 Sagamore Avenue
Teaneck, New Jersey

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

26th day of August, 1977

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY LITWIN AND EVELYN LITWIN

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)~~
1968, 1969, 1971 - 1973

State of New York
County of Albany

Marsina Donnini, 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 26th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Leonard Schulman, CPA. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Leonard Schulman, CPA.
230 Park Avenue
New York City, New York 10017

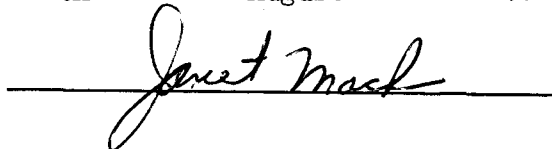
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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

26th day of August, 1977.







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

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

August 26, 1977

Mr. and Mrs. Harry Litwin
619 Sagamore Avenue
Teaneck, New Jersey

Dear Mr. and Mrs. Litwin:

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) **690 & 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 the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

PAUL B. COBURN
SUPERVISING TAX
HEARING OFFICER

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petitions :
of :
HARRY LITWIN :
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law for :
the Years 1968 through 1973, and for :
Redetermination of a Deficiency or for :
Refund of Personal Income Tax under :
Article 22 of the Tax Law for the :
Years 1968 and 1969 : DECISION
and :
HARRY LITWIN and EVELYN LITWIN :
for Redetermination of a Deficiency or :
for Refund of Personal Income Tax under :
Article 22 of the Tax Law for the Years :
1971 through 1973. :

Petitioner, Harry Litwin, residing at 619 Sagamore Avenue, Teaneck, New Jersey, filed petitions for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1968 and 1969 and for unincorporated business tax under Article 23 of the Tax Law for the years 1968 through 1973 (File Nos. 13934 and 13935).

The petitioners, Harry and Evelyn Litwin, residing at 619 Sagamore Avenue, Teaneck, New Jersey, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the years 1971 through 1973 (File No. 13936).

A formal hearing was held before Solomon Sies, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 20, 1977 at 10:45 A.M.

The petitioners appeared by Leonard Schulman, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether the petitioner was an employee exempt from the imposition of unincorporated business tax, or an independent contractor subject to unincorporated business tax.

II. Whether the petitioner, Harry Litwin, had a regular place of business outside the State of New York.

III. Whether the petitioners are entitled to an allocation of income attributable to sources outside the State of New York.

FINDINGS OF FACT

1. During the years in issue, the petitioners were and still are nonresidents residing in the State of New Jersey. On April 10, 1975, the Income Tax Bureau issued a Statement of Audit Changes

against the petitioner, Harry Litwin, for the years 1968 and 1969, imposing additional personal income tax of \$4,307.08 on the basis of an adjustment made to conform with the audit of his Federal income tax return, reducing deductions thereon and disallowing an allocation of business income alleged to be attributable to sources outside the State. Additional unincorporated business tax was imposed in the amount of \$2,586.19. The total additional tax amounted to \$6,893.27 with interest of \$910.25 for a grand total of \$7,803.52. A Notice of Deficiency was accordingly issued therefor. The petitioner did not file any unincorporated business tax returns for the years 1968 and 1969. The petitioner timely filed a petition for redetermination of the aforesaid deficiency.

2. On April 11, 1975, the Income Tax Bureau issued a Statement of Audit Changes holding petitioner, Harry Litwin, liable for unincorporated business tax for the years 1970 through 1973 on the business income reported by him, and disallowing any allocation of such business income to sources outside the State. Unincorporated business tax was imposed in the amount of \$2,636.10, with interest of \$466.00, for a total of \$3,102.10. A Notice of Deficiency was issued on April 11, 1975 in the amount of \$3,102.10 against petitioner for the years 1970 through 1973. The petitioner did not file any unincorporated business tax returns for the aforementioned years. He timely filed a petition for redetermination of said deficiency.

3. On April 11, 1975, the Income Tax Bureau issued a Statement of Audit Changes against the petitioners, Harry Litwin and Evelyn Litwin, his wife, for the years 1971 through 1973 imposing additional personal income tax in the amount of \$3,396.29, with interest of \$472.63, for a total of \$3,868.92. A claimed allocation of income attributable to sources outside the State was disallowed. Personal exemption for 1973 was computed on the basis of a limited percentage of 58.8% or \$1,528.80. Accordingly, a Notice of Deficiency was issued against the aforesaid petitioners. They timely filed a petition for redetermination of said deficiency.

4. During the years 1968 through 1973, the petitioner, Harry Litwin, was a ladies handbag salesman, selling non-competitive handbags for five unaffiliated firms on a straight commission basis. None of the principals withheld Federal or New York State income or social security taxes. The petitioner did not have any employees. There was no agreement by the principals as to the division of petitioner's time or effort. The petitioner was free to represent other principals as he chose, providing the products were non-competitive. None of the principals exercised any supervision and control over the activities of the petitioner. He was not reimbursed by any of his principals for his business expenses.

5. The petitioner reported his commission income on Federal Schedule "C" in which he indicated that he maintained an office at 310 Fifth Avenue, New York, New York. In correspondence addressed to the Income Tax Bureau (Department's exhibit "S"), it was indicated that the petitioner did not maintain any other office except as indicated above. The petitioner deducted on his Federal Schedule "C" rent on business property, which represented the use of a portion of his home in New Jersey for the storage of records and papers.

6. During the years in issue, the petitioner received compensation which was reported as wages from Litwin Industries, Inc., Gaylord Handbags Inc. and Conti Importing Corp., all located at 310 Fifth Avenue, New York, New York. Each of these firms deducted Federal and State withholding taxes on the compensation paid petitioner. Litwin Industries Inc. is a domestic corporation organized under the laws of the State of New York, and is engaged in the business of selling ladies' handbags for manufacturers. The petitioner was the sole principal of Litwin Industries Inc. He sold handbags for this firm. Gaylord Handbags Inc. and Conti Importing Inc. were engaged in the jobbing of handbags. The petitioner contracted with these firms to have them make up handbags for his account and they would be sold for his account. He fixed a certain price and received the difference between what it cost him and the price for which he sold them.

7. No evidence was presented on behalf of the petitioner with respect to the territory assigned by the principals as to the commission income, nor was there any evidence presented as to commission income attributable to sources outside the State of New York.

8. The Income Tax Bureau estimated the commission income earned by petitioner in 1970, based upon the average of his earnings in 1968, 1969, 1970, 1971, 1972 and 1973. The petitioner presented no evidence as to his actual commission income in said year.

9. The petitioner did not file any unincorporated business tax returns with the State of New Jersey for the years in issue.

CONCLUSIONS OF LAW

A. That the commission income received by the petitioner, Harry Litwin, from the firms he represented during the years 1968 through 1973, constituted income from his regular business of selling ladies' handbags 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 the petitioner, Harry Litwin, during the years 1968 through 1973 constituted the carrying on of an unincorporated business. 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 petitioner did not maintain a regular place of business outside the State of New York within the intent and meaning of section 707 of the Tax Law; that the space utilized by the petitioner in his home in New Jersey for the storage of records did not constitute a bona fide office regularly conducted by the petitioner outside the State of New York.

D. That the petitioner, Harry Litwin, has failed to establish that he is entitled to an allocation of income attributable to sources outside the State of New York.

E. That the petitions of Harry Litwin for redetermination of the deficiencies of personal income tax for 1968 and 1969 and for unincorporated business tax for 1968 and 1969 and for 1970 through 1973 be and the same are hereby denied.

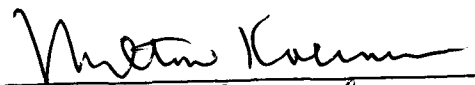
F. That the petition of Harry Litwin and Evelyn Litwin for redetermination of the personal income tax deficiency for the years 1971 through 1973 be and the same is hereby denied; that additional statutory interest shall be added until paid.

DATED: Albany, New York

August 26, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER