

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN and BEVERLY SILBERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or
a Revision of a Determination or a Refund
of Personal Income
Taxes under Article (s) 22 of the
Tax Law for the Year(s) ~~XXXXXX~~
1970, 1971 and 1972.

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 22nd day of July, 1977, she served the within
Notice of Decision by (certified) mail upon Marvin and Beverly
Silberman ~~(representative of the)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Marvin & Beverly Silberman
249-21 61st Avenue
Little Neck, New York 11362
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~~ 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

22nd day of July, 1977.

Marsina Donnini

Janet Smith

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARVIN and BERVERLY SILBERMAN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Personal Income :
Taxes under Article ~~(e)~~ 22 of the :
Tax Law for the Year(s) ~~XXXXXXX~~ :
1970, 1971 and 1972

State of New York
County of Albany

Marsina Domini, 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 22nd day of July, 1977, she served the within
Notice of Decision by (certified) mail upon Melvin Metzger, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Melvin Metzger, Esq.
176-60 Union Turnpike
Flushing, New York 11366

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

22nd day of July, 1977.

Marsina Domini

Janet Mack



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

July 22, 1977

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

Marvin & Beverly Silberman
249-21 61st Avenue
Little Neck, New York 11362

Dear Mr. & Mrs. Silberman:

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 ~~690~~ **690** 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,


JOSEPH CHYNOWETH
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MARVIN and BEVERLY SILBERMAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes	:	
under Article 22 of the Tax Law for the	:	
Years 1970, 1971 and 1972.	:	

Petitioners, Marvin and Beverly Silberman, residing at 249-21 61st Avenue, Little Neck, New York 11362, have filed a petition for redetermination of a deficiency or for refund of personal income taxes under Article 22 of the Tax Law for the years 1970, 1971 and 1972. (File No. 13726)

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on September 21, 1976 at 9:15 a.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Melvin Metzger, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (I. A. Levy, Esq. of counsel).

ISSUE

Whether the petitioner's contributions to a self-employed retirement plan (Keogh Plan) were deductible during the years 1970, 1971 and 1972.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Marvin Silberman, contended that he was employed as a salesman during the years 1970, 1971 and 1972 and that, although he was a bona fide employee, he was a salesman eligible to deduct contributions made to a self-employed retirement plan.

2. That the petitioner has not sustained the burden of proof required under section 689(e) of the Tax Law to show that he qualified under section 401 of the Internal Revenue Code as an employer-employee or as a self-employed individual who was permitted to establish a self-employed retirement plan and deduct contributions made to said plan.

3. That the petitions of Marvin and Beverly Silberman are denied and the notices of deficiency issued November 26, 1973 for the year 1970 for \$211.28, and September 30, 1974 for the years 1971 and 1972 for \$177.44 and \$86.18, respectively, are sustained together with such additional interest as may be lawfully owing.

DATED: Albany, New York
July 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER