

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARTIN L. LEE

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 and 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1970, 1971 and 1972.

State of New York
County of Albany

John Huhn , being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Martin L. Lee
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Martin L. Lee
2500 Johnson Avenue
Bronx, New York 10463
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 December , 19 78





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MARTIN L. LEE

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 and 23 of the
Tax Law for the Year(s) ~~or Period(s)~~
1970, 1971 and 1972.


State of New York
County of Albany

John Huhn, being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 13th day of December, 1978, he served the within
Notice of Decision by (certified) mail upon Robert Manowitz and
John Meyerer (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Robert Manowitz and John Meyerer, CPA's
Manowitz, Meyerer & Mayor
250 West 57th Street
New York, New York 10019
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 December, 1978.







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

December 13, 1978

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

**Mr. Martin L. Lee
2500 Johnson Avenue
Bronx, New York 10463**

Dear Mr. Lee:

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 and 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,

**Joseph Chyrywaty
Hearing Examiner**

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
MARTIN L. LEE	:	DECISION
	:	
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 Years 1970, 1971 and	:	
1972.	:	

Petitioner, Martin L. Lee, 2500 Johnson Avenue, Bronx, New York 10463, 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 years 1970, 1971 and 1972 (File No. 12674).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 17, 1978 at 1:15 P.M. Petitioner appeared by Robert Manowitz, CPA and John Meyerer, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether petitioner, a sole proprietor, was entitled to a deduction for wage expenses for his wife, thereby permitting him to reduce his unincorporated business and personal income tax liabilities.

FINDINGS OF FACT

1. Petitioner, Martin L. Lee, and his wife Geraldine Lee timely filed New York State combined personal income tax returns on Form IT-208 for 1970, 1971 and 1972, on which business income was equally divided between petitioner and his wife. Unincorporated business tax returns were not filed for said years.

2. The Income Tax Bureau contended that petitioner was engaged in the carrying on of an unincorporated business. On March 31, 1975, it issued a statutory Notice of Deficiency, asserting unincorporated business tax for 1970, 1971 and 1972 of \$2,240.70 and personal income tax for 1971 and 1972 of \$1,296.91, plus penalty (pursuant to section 685(a)(1) and (a)(2) of the Tax Law) and interest of \$916.85 and \$638.88, respectively, for a total of \$5,093.34. No adjustment was made to the 1970 personal income tax return, since the statute of limitations had expired for said year.

3. Petitioner conceded that he was the sole proprietor of an unincorporated business. The business was involved in two operations, namely, a travel agency and the sale of notions, ties, shirts and promotional items. Both operations were carried on from the same location. The income and expenses for both operations were lumped together on Federal Schedule "C" and treated on his books as one entity.

4. Petitioner contended that his wife worked for him as an employee and, therefore, he was entitled to deduct a reasonable wage expense attributable to her services for unincorporated business tax purposes. He also contended that her wage income was reportable on her separate tax return on Form IT-208. He determined her wages to be \$12,480.00 in 1970 and \$11,440.00 in 1971 and the same in 1972. He further contended that his wife was involved mainly in the travel agency and that she worked five days a week at the office and ran the day-to-day operations of the agency.

5. Petitioner did not pay his wife a salary during the years at issue. Petitioner's wife testified that she did not demand a salary check "because he took good care of me." There were no deductions, no payments for social security, unemployment insurance, workmen's compensation, disability benefits, or the withholding of State or Federal income taxes. Petitioner did not submit documentary or other substantial evidence to show that his wife was a bona fide employee, or that their sharing in financial matters was any different than that which many married persons do, without regard to work or business.

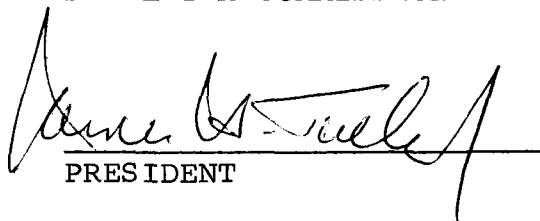
CONCLUSIONS OF LAW

A. That petitioner, Martin L. Lee, did not sustain the burden of proof required (in accordance with section 689(e) of the Tax Law) to show that his wife was a bona fide employee; therefore, he was not entitled to a deduction for wage expense, thereby permitting him to reduce his unincorporated business and personal income tax liabilities.

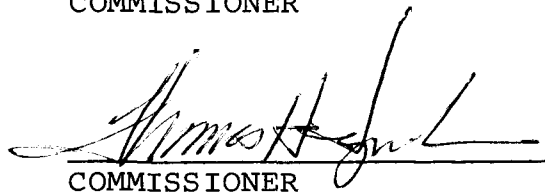
B. That the petition of Martin L. Lee is denied and the Notice of Deficiency issued March 31, 1975 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
December 13, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER