

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

CLARON and KRISTINE BAILEY

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income & Unincorporated Bus. :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year ~~(XXXXXX)~~ :  
1972

State of New York  
County of

John Huhn , 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 24th day of April , 1978, ~~she~~ served the within  
Notice of Decision by (certified) mail upon Claron & Kristine Bailey

~~(representative of)~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Claron and Kristine Bailey  
35 "B" Pal Street  
Plainview, NY 11803

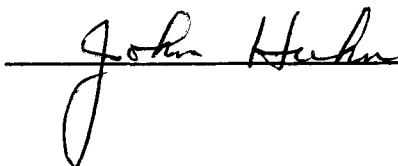
and by depositing same enclosed in a postpaid properly addressed wrapper in a  
(post office or official depository) under the exclusive care and custody of  
the United States Postal Service within the State of New York.

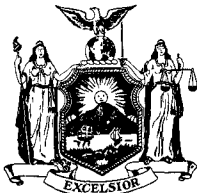
That deponent further says that the said addressee is the ~~(representative of)~~  
~~(the)~~ petitioner herein and that the address set forth on said wrapper is the  
last known address of the ~~(representative of the)~~ petitioner.

Sworn to before me this

24th day of April , 1978

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 \_\_\_\_\_



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

April 24, 1978

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

Claron and Kristine Bailey  
35 "B" Pal Street  
Plainview, NY 11803

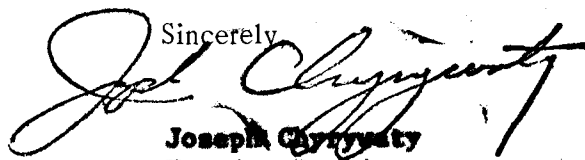
Dear Mr. & Mrs. Bailey:

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

  
**Joseph C. Chynoweth**  
**Hearing Examiner**

~~xxxxxx Petitioner's Representative xxxxxxxx~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
CLARON BAILEY and KRISTINE BAILEY	:	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 Year 1972.	:	

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Petitioners, Claron and Kristine Bailey, residing at 35 "B" Pal Street, Plainview, New York 11803, 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 1972 (File Nos. 10485 and 10486).

A small claims hearing was held before Joseph Chyrywat, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 28, 1977 at 2:45 P.M. Petitioner Claron Bailey appeared pro se and for his wife, petitioner Kristine Bailey. The Income Tax Bureau appeared by Peter Crotty, Esq. (Francis Cosgrove, Esq., of counsel).

ISSUES

I. Whether the income derived from petitioner Claron Bailey's activities for the year 1972 as an outside salesman with Sorenson Research Company, was subject to unincorporated business tax.

II. Whether petitioner Claron Bailey worked for Xomed Corporation in 1972 and, if so, whether the receipt of commissions from Xomox Corporation was also subject to unincorporated business tax.

III. Whether petitioners substantiated travel, entertainment and other miscellaneous expenses which they deducted on their tax return for the year 1972.

FINDINGS OF FACT

1. Petitioners, Claron Bailey and Kristine Bailey, timely filed a New York State income tax resident return (Form IT-201) for the year 1972. Petitioner Claron Bailey did not file an unincorporated business tax return for said year.

2. On October 27, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner Claron Bailey and another Notice of Deficiency against both Claron and Kristine Bailey. The Notice of Deficiency in the name of Claron Bailey was issued on the grounds that his activities as an outside salesman constituted the carrying on of an unincorporated business. It set forth a deficiency in the amount of \$698.06, plus penalty and interest. The Notice of Deficiency in the name of Claron and Kristine Bailey was issued upon the grounds that certain travel, entertainment and miscellaneous expenses reported by Claron Bailey and Kristine Bailey on their 1972 joint New York State income tax return had not been adequately substantiated by documentary evidence of payment. As a result, an additional \$157.20 of personal income tax (plus interest) was determined to be due.

3. Claron Bailey was a regional sales manager for Sorenson Research Co., a manufacturer of medical supplies and equipment. He supervised and hired salesmen and solicited new accounts within the New York, New Jersey and New England areas. Although petitioner's territory was restricted to said region by Sorenson Research Co., said principal neither limited nor controlled which accounts petitioner could pursue within that area.

4. Monthly and quarterly sales reports, as well as weekly progress reports, were required by Sorenson Research Co. from all of its salesmen.

5. Claron Bailey, was paid on a commission basis by Sorenson Research Co. The amount of the commission was determined by an agreed-upon percentage of the total sales transacted in his region. Federal and New York income taxes and social security taxes were not withheld from his income by Sorenson Research Co. for the year in question, although a pension plan, medical and dental benefits, as well as discounts on the company's products, were provided by said company to its sales representatives.

6. In the year 1971, during his tenure at Sorenson Research Co., petitioner Claron Bailey assumed a similar position with the Xomed Corporation (a subsidiary of Xomox Corporation), also a supplier of medical goods and equipment. After approximately three months with Xomed Corporation, Sorenson Research Co. requested that the petitioner terminate his association with the other medical supplier. After said request, Claron Bailey allegedly discontinued his employment with Xomed Incorporated and contended that his wife, Kristine Bailey, began to work for them, performing various clerical duties. Kristine Bailey was reportedly employed by Xomed Corporation for the years 1972 through 1974.

7. In petitioners' New York State income tax return (Form IT-201) for the year 1972, Kristine Bailey's occupation was listed as that of housewife. The United States Miscellaneous Income Statement (Form 1099-Misc.) for 1972 from Xomox Corporation identified Claron Bailey (also known as "Monk" Bailey), as the recipient of commissions in the sum of \$11,739.33. Petitioner explained that a "computer foul-up" failed to erase his name from the payroll and that as a result, income earned from Xomed Corporation by Kristine Bailey for services rendered by her were consequently paid to her husband by Xomox Corporation.

Petitioners introduced a statement signed by Kristine Bailey alleging her employment with Xomed Corporation, but failed to introduce other records which showed that an employer-employee relationship did exist between Xomed Corporation and Kristine Bailey.

8. Petitioner Claron Bailey maintained that once Sorenson Research Co. requested that he terminate his relationship with Xomed Corporation he did so and then worked only for Sorenson Research Co. during the period in question. Claron Bailey also contended that he always considered himself to be an employee of Sorenson Research Co. and that said company regarded him as an employee as well. This was in spite of the fact that the copy of the agreement between Sorenson Research Co. and its sales representatives stated that the legal relationship between the parties should be one of an independent contractor. Petitioner Claron Bailey never signed the agreement while he was associated with Sorenson Research Co. He explained that the agreement did not alter his employer-employee relationship with Sorenson Research Co., and further contended that the agreement was drafted only to appease certain sales representatives who wished to have terms of their relationship with Sorenson Research Co. in writing.

9. In support of his contention that he was an employee of Sorenson Research Co., petitioner Claron Bailey referred to an audit of said company by the Internal Revenue Service, in which it was determined that the association between Sorenson Research Co. and its sales representatives constituted an employer-employee relationship for FICA tax purposes. This resulted in a levy for unpaid FICA taxes against Sorenson Research Co.

10. Petitioner Claron Bailey maintained an office in his New York home where he also had an answering service. He did not have a separate telephone number for business and personal use.

11. Business expenses (such as office supplies, travel, entertainment and other miscellaneous costs) were paid for by Claron Bailey, without reimbursement from Sorenson Research Co.

12. The Income Tax Bureau contended that some of the amounts reported as business deductions by the petitioners on their 1972 income tax return were unsubstantiated. Accordingly, it recomputed Claron Bailey and Kristine Bailey's taxable income.

13. Petitioner Claron Bailey submitted his datebook as evidence of the meals and lodging expenses incurred during 1972. No receipts or guest checks were introduced.

14. Telephone bills for nine months of 1972 were presented by petitioners to prove the amounts reported for said year. Petitioners explained that the remaining three months' charges were computed on the basis of his previous records.

15. There was no documentary evidence introduced by petitioners to verify any of the entertainment and gift expenses which they reported in their 1972 New York State income tax return.

#### CONCLUSIONS OF LAW

A. That petitioner Claron Bailey's sales activities on behalf of the Sorenson Research Co. during the year 1972 constituted the carrying on of a sales business as an independent contractor, within the meaning and intent of section 703(b) of the Tax Law, since said firm failed to exercise sufficient direction and control over petitioner's sales activities so as to result in an employer-employee relationship. Therefore, the income derived from petitioner's sales activities on behalf of the Sorenson Research Co. during the year 1972 was subject to unincorporated business tax.

B. That petitioner Claron Bailey has failed to sustain the burden of proof required by section 689(e) of the Tax Law to show that the commission income of \$11,739.33 paid to him during the year 1972 by Xomox Corporation was not commission income for sales made by said petitioner on behalf of Xomed Corporation, or that Xomed Corporation exercised sufficient direction and control over his sales activities so as to result in an employer-employee relationship. Therefore, petitioner's sales activities during 1972 on behalf of Xomed Corporation are considered to have constituted the carrying on of an unincorporated business, within the meaning and intent of section 703(b) of the Tax Law. The income derived from petitioner's sales activities during 1972 on behalf of Xomed Corporation is subject to unincorporated business tax.

C. That the petitioners have failed to submit sufficient documentary or other evidence to substantiate the travel, entertainment and other miscellaneous expenses disallowed by the Income Tax Bureau for the year 1972. Therefore, said expenses were properly disallowed as unsubstantiated.

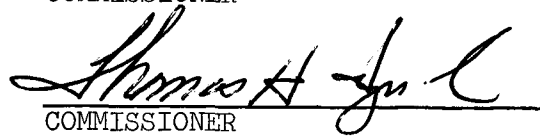
D. That the petition of Claron Bailey and Kristine Bailey is denied and the notices of deficiency issued on October 27, 1975 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York  
April 24, 1978

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER