

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Gilbert Teitelbaum :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of
Personal Income & UBT :
under Article 22 & 23 of the Tax Law
for the Year 1970. :

State of New York
County of Albany

Jay Vredenburg, 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 16th day of May, 1980, he served the within notice of Decision by certified mail upon Gilbert Teitelbaum, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gilbert Teitelbaum
18 Sloan Dr. So.
Valley Stream, NY

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
16th day of May, 1980.

Joanne Knapp

J. Vredenburg

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

May 16, 1980

Gilbert Teitelbaum
18 Sloan Dr. So.
Valley Stream, NY

Dear Mr. Teitelbaum:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
GILBERT TEITELBAUM	:	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 1970.	:	

Petitioner, Gilbert Teitelbaum, 18 Sloan Drive South, Valley Stream, New York 11580, 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 1970 (File No. 13432).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on May 23, 1979 at 1:15 P.M. Petitioner appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether income derived from petitioner's activities as a salesman is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Gilbert Teitelbaum, and Selma Teitelbaum, his wife, timely filed a joint New York State Income Tax Resident Return for 1970, on which he reported salary income of \$65,248.76 from his activities as a salesman. Petitioner did not file an unincorporated business tax return for 1970.

2. On May 21, 1973, the Income Tax Bureau issued a Notice of Deficiency along with an explanatory Statement of Audit Changes, on which petitioner's income from his activities as a salesman was held subject to unincorporated business tax. In addition, personal income tax of \$840.00 plus interest was imposed, as a result of reducing business expenses from \$22,951.00 to \$16,951.00. Petitioner conceded this adjustment and submitted a remittance of \$840.00. Interest on the additional personal income tax of \$840.00 remains outstanding.

3. Petitioner, Gilbert Teitelbaum, was a salesman representing Carole Curtis, Inc. ("Curtis") during 1970. He was compensated on a commission basis with a guaranteed draw against commissions. Petitioner was not reimbursed for selling expenses. Curtis withheld FICA taxes from petitioner's compensation. In addition to paying its matching share of FICA taxes, Curtis paid for unemployment insurance, workman's compensation and disability insurance.

4. Petitioner was forbidden by Curtis from representing other firms and was required to devote all his selling time and effort to Curtis. His selling activities were restricted to a specific territory which was further restricted by the exclusion of certain house accounts within petitioner's assigned territory.

5. Petitioner was supplied with sales samples and price lists. He was required to strictly adhere to the credit policies and terms as dictated by Curtis. All orders were subject to the approval of Curtis, and petitioner was forbidden from having any discretionary power over adjustments and discounts.

6. Petitioner was required to sell at a showroom, maintained by Curtis, where he was provided with desk space. At the showroom, petitioner was required to sell and service accounts within and without his assigned territory. He was entitled to commissions only from those customers located within his assigned territory.

7. Petitioner maintained a self-employed retirement plan (Keogh Plan) during 1970.

CONCLUSIONS OF LAW

A. That sufficient direction and control was imposed by Carole Curtis, Inc., during 1970, so as to cause petitioner, Gilbert Teitelbaum, to become an employee of Carole Curtis, Inc; and accordingly, the income derived therefrom is exempt from the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law and 20 NYCRR 203.10.

B. That the petition of Gilbert Teitelbaum is granted to the extent that the unincorporated business tax liability for 1970 is cancelled; that the interest due on additional personal income tax previously remitted should be updated to the date paid.

C. That the Audit Division is hereby directed to modify accordingly the Notice of Deficiency issued May 21, 1973. Except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

MAY 16 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER