

U.S.T. Determinations A-Z
Lubin, Seymour

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of :

SEYMOUR LUBIN :

Affidavit of Mailing
of Notice of Decision,
by Registered Mail

For a Redetermination of a Deficiency :
or a Refund of UNINCORPORATED BUSINESS :
Taxes under Article(s) 16-A of the Tax :
Law for the year(s) 1955, 1956, 1957, 1958 :
and 1959 :

State of New York
County of Albany

Patricia Whitman , being duly sworn, deposes and
says, that she is an employee of the Department of Taxation and
Finance, and that on the 16th day of May , 1969, she served
the within Notice of Decision (or of "Determination") by registered
mail upon Seymour Lubin

the petitioner in the within proceeding, by enclosing a true copy
thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Seymour Lubin, 101 Chestnut Street, Binghamton, NY

and by delivering the same at Room 214a, Building 8, Campus, Albany,
marked "REGISTERED MAIL" to a messenger of the Mail Room, Building
9, Campus, Albany, to be mailed by registered mail.

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 , 1969 .

[Signature]

Patricia Whitman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	Affidavit of Mailing
SEYMOUR LUBIN	:	of Notice of Decision,
	:	by Registered Mail
	:	
For a Redetermination of a Deficiency	:	
or a Refund of UNINCORPORATED BUSINESS	:	
Taxes under Article(s) 16-A of the Tax	:	
Law for the year(s) 1955, 1956, 1957, 1958	:	
and 1959	:	

State of New York
County of Albany

PATRICIA WHITMAN, being duly sworn, deposes and says, that she is an employee of the Department of Taxation and Finance, and that on the 16th day of May, 1969, she served the within Notice of Decision (or of "Determination") by registered mail upon Harry Bangilsdorf, Esq. Representative for the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:
Harry Bangilsdorf, Esq., 40 Front Street, Binghamton, NY

and by delivering the same at Room 214a, Building 8, Campus, Albany, marked "REGISTERED MAIL" to a messenger of the Mail Room, Building 9, Campus, Albany, to be mailed by registered mail.

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, 1969.

My commission expires

Patricia Whitman

BUREAU OF LAW

MEMORANDUM

*Unincorp. Bus. Tax
Determinations A-Z
Lubin, Seymour I.*

TO: State Tax Commission

FROM: Vincent P. Melineau, Hearing Officer

SUBJECT: Seymour I. Lubin
Applications For Revision or Refund of
Unincorporated Business Tax Under
Article 16-A of the Tax Law for the Years
1955, 1956, 1957, 1958 and 1959

A hearing on the above applications was held before me at 184 Court Street, Binghamton, New York on October 7, 1966.

The question at issue is whether income of the taxpayer, as a manufacturer's representative, is subject to unincorporated business tax.

During the years in question, the taxpayer represented five companies. One of these, Vaughan Mirror, is a subsidiary of one of the two principal firms which he represents.

Taxpayer's entire income, averaging \$15,000 a year, is from commissions. None of the firms he represents withhold State or Federal income tax or social security contributions, nor is he reimbursed for travel, meals, telephone, stationery or other business expenses which amount to approximately 50% of his gross income. He is not permitted to represent other lines without prior permission of his two major companies. If he wishes to take major time off, such as a vacation, he must be cleared by both factories.

Taxpayer has no office or showroom of his own and is not permitted to employ an assistant. Taxpayer spends a great deal of time on the road and sends in his orders en route. He also attends the showrooms maintained by each of his two principal firms and is required to be present at the furniture shows which are held at various locations about seven times a year for about a week each. During the shows, he is expected to spend about 50% of his time at the display of each of his two principals. His stationery carries only his own name as manufacturer's representative. He may write up orders on firm forms or on his own forms. He has no written contract with either firm.

Taxpayer receives commissions on all sales in his territory whether written by himself or by someone else. At times he may write orders for customers outside his territory for which he receives no commission.

The last sentence of section 386 of the Tax Law added 1933 states:

" * * * A person shall not be deemed to be engaged in an unincorporated business solely because of selling goods, wares and merchandise for more than one person, firm or corporation unless he maintains an office or employs one or more assistants or otherwise regularly carries on a business."

The taxpayer neither maintains an office nor employs any assistant and in my opinion does not so obviously come within the last part of the provision "carries on a business" as to bring him within the statute.

In the one case in which this provision was considered, Matter of Britton v. State Tax Commission, 23 A D 2d 957, the PER CURIAM decision, while repeating the provisions of the section, confirmed the determination of the Tax Commission with respect to a taxpayer who represented 11 manufacturers.

While the taxpayer in the present case lacked some of the usual marks of an employee, such as having taxes deducted from his wages, still it was sufficiently under the supervision of his principals as to require regular attendance at certain times, to receive the benefit of sales made by others in his territory and to be deprived of commission from orders written by him outside of his territory, and was not permitted to employ an assistant.

For the reasons stated above, I recommend that the determination of the State Tax Commission granting the application be substantially in form submitted herewith.

HEARING OFFICER

VFM:io
Enc.

April 4, 1968

To. Mr. Edward Rook

This is for submission to the Commission upon
your approval.

April 30, 1969

NW

A handwritten signature in dark ink, appearing to be 'Nigel G. Wright', written in a cursive style.

From Nigel G. Wright

STATE OF NEW YORK
STATE TAX COMMISSION

IN THE MATTER OF THE APPLICATIONS

OF

SEYMOUR I. LUBIN

FOR REVISION OR REFUND OF UNINCORPORATED BUSINESS TAX UNDER ARTICLE 16-A OF THE TAX LAW FOR THE YEARS 1955, 1956, 1957, 1958 AND 1959

Seymour I. Lubin, the taxpayer herein, having filed applications for revision or refund of unincorporated business tax under Article 16-A of the Tax Law for the years 1955, 1956, 1957, 1958 and 1959, and a hearing having been held at the office of the State Tax Commission at 184 Court Street, Binghamton, New York on the 7th day of October, 1966, before Vincent P. Molineaux, Hearing Officer of the Department of Taxation and Finance, and the record having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That during the years in question the taxpayer represented five companies, one of which was a subsidiary of one of the two principal firms which he represented.

(2) That taxpayer's entire income is from commissions.

(3) That none of the firms he represents withhold State or Federal income tax or social security contributions, nor is he reimbursed for travel, meals, telephone, stationery or other business expenses which amount to approximately 50% of his gross income. He is not permitted to represent other lines without permission of his two major companies. When he wishes to take major time off, such as a vacation, he must be cleared by both factories.

(4) That taxpayer has no office or showroom of his own and is not permitted to employ an assistant.

(5) That taxpayer spends most of his time on the road, sends in his orders en route and attends the showrooms maintained

by either of his two principal firms and is required to be present at the furniture shows which are held at various locations about seven times a year for about one week each.

(6) That during the shows taxpayer is required to spend about 50% of his time at the display of each of his two principals.

(7) That taxpayer's stationery carries only his own name as manufacturer's representative but that he writes up orders on firm forms or on his own forms.

(8) That taxpayer has no written contract with any of the firms which he represents.

(9) That taxpayer receives commissions on all sales in his territory whether written by himself or by someone else and that at shows he may write orders for customers outside his territory for which he receives no commission.

Based upon the foregoing findings and all of the evidence presented herein, the State Tax Commission hereby,

DETERMINES:

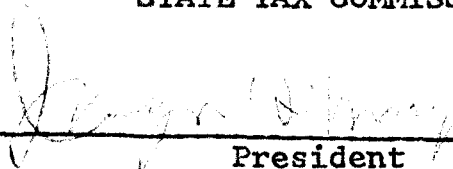
(A) That taxpayer was not, during the years in question, carrying on a business within the meaning of section 386 of the Tax Law.

(B) That taxpayer's income for the years 1955, 1956, 1957, 1958 and 1959 was not subject to unincorporated business tax.

(C) That the assessments AB 033488, AB 033489, AB 033490, AB 012349 and AB 033491 are incorrect and are cancelled in full.

Dated: Albany, New York this 14th day of May, 196⁹.

STATE TAX COMMISSION


President


Commissioner


Commissioner