

STATE OF NEW YORK  
STATE TAX COMMISSION

W.B.T. Peter  
Minsky Leo  
1970

In the Matter of the Petition

of

LEO P. MIRSKY

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) 1954, 1955 :

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

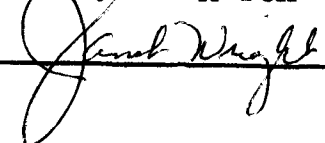
State of New York  
County of Albany

LYNN PUORTO , 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 9th day of March , 1970, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Leo P. Mirsky  
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Leo P. and Hazel Mirsky  
650 Park Avenue  
New York, New York  
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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

10th day of March , 1970



  
\_\_\_\_\_  
Lynn Puerto

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LEO P. MIRSKY

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) 1954 and 1955

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

LYNN PUORTO, 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 9th day of March, 1970, she served the within  
Notice of Decision (or Determination) by (certified) mail upon

Elias Goldin, CPA (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Elias Goldin, CPA  
19 West 44th Street  
New York, New York 10036

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative  
of) 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

10th day of March, 1970.

Janet Wright

Lynn Puerto

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Applications	:	
of	:	
LEO P. MIRSKY	:	DETERMINATION
For Revision or Refund of Unincorporated	:	
Business Taxes Under Article 16-A of the	:	
Tax Law for the Years 1954 and 1955	:	

---

The taxpayer, having filed (with his wife) applications pursuant to Sections 386 j and 374 of the Tax Law for revision of notices of additional assessment dated March 28, 1961, for unincorporated business taxes imposed by Article 16-A of the Tax Law for the years 1954 and 1955, and such applications having been denied and hearings thereon demanded and duly held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

(1) The issues in this case are whether the taxpayer is exempt from the unincorporated business tax by reason of being an employee rather than an independent contractor and whether the taxpayer is precluded from claiming such exemption by reason of an adverse determination of the State Tax Commission with respect to this taxpayer for different taxable years.

(2) The assessments were against Leo P. Mirsky alone and in the amount of \$1026.92 for 1954 and \$1065.07 for 1955.

(3) The taxpayer is now deceased. He was a soliciting life insurance agent for New England Mutual Life Insurance Co.

(4) The previous determination raised the same issue as is raised herein. It related to the taxable years 1951, 1952, 1953, 1956, and 1957. It was signed by the State Tax Commission on August 25, 1965. The taxpayer paid the assessment except, however, for interest and penalties which were waived by the Commission.

(5) The only testimony herein on behalf of taxpayer was by his accountant who had also represented him at the hearing with respect to the August 25, 1965 determination. The accountant did not testify as to his personal knowledge. He was unable to state that the facts here involved were any different than those developed at the previous hearing.

Upon the foregoing findings and all the evidence in the case,  
The State Tax Commission hereby

DETERMINES:

(1) The taxpayer is not bound by a previous adverse determination with respect to different taxable years. However, the State Tax Commission will ordinarily observe the principle of stare decisis and, except for the most cogent reasons, will be guided by its past determinations.

(2) The taxpayer has failed to carry the burden of proof that he is an employee and exempt from the tax.

(3) The assessments are correct in the amounts stated in paragraph two and are affirmed as to Leo P. Mirsky together with such interest and other charges, if any, as may be lawfully due pursuant to Sections 376 and 377 of the Tax Law. The assessments do not include any taxes or other charges which could not have been lawfully demanded and the taxpayer's applications for revision thereof are hereby denied.

Dated: Albany, New York


This 9th day of March

1970.

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER