

STATE OF NEW YORK
STATE TAX COMMISSION

Zaremba Ben
1970
UBT

In the Matter of the Petition
of
Ben & Shirley Zaremba
For a Redetermination of a Deficiency or
a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1961 & 1962 :

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

State of New York
County of Albany

Martha Funaro , 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 29th day of December , 19 70, she served the within Notice of Decision (or Determination) by (certified) mail upon Ben & Shirley Zaremba (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Lawrence Martin Band, Rosenbaum and Martin 271 North Avenue New Rochelle, 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
29th day of December , 1970
Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
Ben & Shirley Zaremba

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business;
Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1961 & 1962 :

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116 Bayberry Lane
New Rochelle, 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.

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Sworn to before me this

29th day of December , 19 70

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
BEN ZAREMBA AND SHIRLEY ZAREMBA : DECISION
For Redetermination of Deficiency :
or for Refund of Unincorporated :
Business Taxes under Article 23 of :
the Tax Law for the Years 1961 and :
1962 :

Petitioners, Ben Zaremba and Shirley Zaremba, have filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the Years 1961 and 1962. (File #2-3681455). A formal hearing was held before Alfred Rubenstein, Hearing Officer, on November 2, 1966 at 11:00 A.M. at the offices of the State Tax Commission, 80 Centre Street, New York, New York. Band, Rosenbaum, and Martin by Lawrence Martin, C.P.A. appeared for petitioners.

FINDINGS OF FACT

1. Petitioners, Ben Zaremba and Shirley Zaremba, filed joint New York State income tax resident returns for the years 1961 and 1962. He did not file any unincorporated business tax returns for the years 1961 and 1962.
2. On July 12, 1965 the Income Tax Bureau issued a statement of audit changes against petitioners, Ben Zaremba and Shirley Zaremba, imposing unincorporated business tax upon the income received by petitioner, Ben Zaremba, from his activities as a salesman during the years 1961 and 1962 upon the ground that his activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law and accordingly issued a notice of deficiency therefor in the sum of \$681.44.

3. That petitioner, Ben Zaremba, was a leather goods salesman during the years 1961 and 1962. During those years he represented three unaffiliated firms in the sale of leather goods. The items sold by him for each firm were non-competitive. He maintains a room in his home for the storage of records and samples.

4. That during the years 1961 and 1962 the firms for whom petitioner, Ben Zaremba, sold leather goods did not withhold federal and New York State income taxes or social security taxes from the commissions paid to him and he was not reimbursed for his expenses on "Schedule C" of his federal income tax returns. He deducted business expenses in connection with his sales activities. They did not pay workman's compensation for him. He did not have a written employment agreement. The firms for whom Ben Zaremba sold leather goods did not exercise any control or supervision over his sales activities or techniques or to the time devoted to sales.

CONCLUSION OF LAW

A. That the income received by petitioner, Ben Zaremba, from the firms he represented during the years 1961 and 1962 constituted income from his regular business of selling leather goods and was not compensation as an employee exempt from imposition of unincorporated business tax in accordance with the meaning and intent of Section 703 (b) of the Tax Law.

B. That the aforesaid activities of petitioner, Ben Zaremba, during the years 1961 and 1962 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of Section 703 of the Tax Law.

C. That the petition of Ben Zarembo and Shirley Zarembo is accordingly denied and the notice of deficiency issued July 12, 1965 against them is sustained.

DATED: ALBANY, NEW YORK

December 23, 1968

STATE TAX COMMISSION

William Galbraith

COMMISSIONER

Bruce Newley

COMMISSIONER

Milton Koerner

COMMISSIONER