

STATE OF NEW YORK
STATE TAX COMMISSION

HEARING UNIT - File Copy

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KEY CODE

GROSS DTS.

CASE LAW CITATIONS

DECISION

REMARKS

In the Matter of the Petition

of

WILLIAM GOLDBERG

For a Redetermination of a Deficiency
or for Refund of Unincorporated Business
Taxes under Article 23 of the Tax Law
for the Year 1962

The taxpayer having filed a petition pursuant to Sections 722 and 689 of the Tax Law for a redetermination of deficiency determined under date of December 13, 1965, of Unincorporated Business Taxes imposed by Article 23 of the Tax Law for the Year 1962 and a hearing having been duly held and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

(1) The sole issue raised at the hearing is whether the taxpayer is exempt from the Unincorporated Business tax because his activities as a sales representative were carried on as an employee and not as an independent contractor (Tax Law Sec 703(f); (See Reg. 20 NYCRR 281.3(1)). The amount of such deficiency of \$398.82, with interest, is not in dispute.

(2) The taxpayer appears to be a factory representative for furniture manufacturers.

(3) The taxpayer received income from sales made for the following manufacturers: Woodland Furniture Co. of Lowell Inc., \$11485.34; Atlantic Furniture Products Co., Inc., \$9466.97; Deena Products Co., \$3165.86; York Plastic Products Mfg. Corp., \$671.13;

Farber Bros. Furniture Mfg. Co., Inc., \$185.85.

(4) The taxpayer's wife appeared on behalf of taxpayer but the taxpayer, himself, did not appear or testify and such absence is unexplained. The taxpayer's wife testified that Woodland Furniture Co. did not have a showroom in New York in direct contradiction to a letter submitted by Woodland Furniture Co. and no explanation, therefore, is apparent.

(5) Petitioner presented letters from Woodland Furniture Co., Atlantic Furniture Products Co., Inc., and York Plastic Products Mfg. Corp. These are dated about two months after the petition was filed and are completely identical in language. They state as follows: "His duties in addition to selling included the following: 1- Being at our showroom in New York every Friday for meetings and to show our line to all prospective buyers whether they were his accounts or not. 2- Help set up displays at our showrooms. 3- Take care of complaints in his territory. 4- Attend our company's furniture shows in New York and at our factory. 5- Wait on all our customers at these shows."

(6) Mr. Goldberg is not reimbursed for expenses of traveling or entertaining.

(7) The taxpayer has control over which companies he represents and the territories he wishes to cover.

Upon the foregoing findings and all the evidence presented herein, the State Tax Commission hereby

DECIDES:

A. The primary legal issue in this case is whether any of the manufacturers retaining the taxpayers services exercised such control over his activities as to constitute him an employee rather than an independent contractor.

B. While selling goods for more than one enterprise does not

alone subject the taxpayer to the Unincorporated Business tax (Tax Law Sec 703(f)) it is evidence of carrying on a business when there is no explanation of how each of the enterprises together with the others can control the activities of the taxpayer.

C. Evidence will be construed most strongly against the taxpayer when knowledge of the facts is uniquely within his capacity and he does not testify (Richardson on Evidence Sec. 92; Petition of Robert Gordon, October 20, 1969).

D. While letters from employers are sometimes acceptable to the Commission they are entitled to very little weight when they are obviously dictated by the taxpayer himself. Furthermore, such letters are not from persons not connected with the matters in dispute and so are of little value in proving the custom or usage in a trade.

E. The taxpayer has the burden of proof on all issues to show his status under the unincorporated business tax; taxpayer has not sustained the burden of showing his exclusion therefrom.

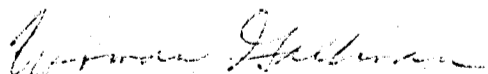
F. The taxpayer is engaged in an unincorporated business.


G. The petition for redetermination of the deficiency is denied and the notice of deficiency in the amount of \$318.82 is affirmed together with such interest, if any, as may be lawfully due under Sec 684 of the Tax Law.


Dated: Albany, New York

STATE TAX COMMISSION

March 9, 1970


PRESIDENT


COMMISSIONER


COMMISSIONER