

STATE OF NEW YORK
STATE TAX COMMISSION

Lewittes
U.B.T.
1171

In the Matter of the Petition

of
William Lewittes, Et al. d/b/u
Lewittes & Sons

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) 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) F/y/e July 31, 1947,
July 31, 1948 & July 31, 1949

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 14th day of April , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Aaron Lewittes,
Esq. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Aaron Lewittes, Esq.
135 East 42 Street
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

14th day of April , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
William Lewittes, Et al. d/b/u :
Lewittes & Sons :

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) 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) f/y/e July 31, 1947-
July 31, 1948-July 31, 1949

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 14th day of April , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon William

Lewittes, Et al. (representative of) the petitioner in the within
d/b/u Lewittes & Sons
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: William Lewittes, Et al.
d/b/u Lewittes & Sons
c/o Lewittes Furniture Enterprises
171 Madison 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

14th day of April , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications
of
WILLIAM LEWITTES, DAVID LEWITTES, MORRIS
LEWITTES, ISRAEL LEWITTES, BERTHA LEWITTES,
CHARLOTTE LEWITTES, FANNIE LEWITTES AND
SARA LEWITTES, INDIVIDUALLY AND AS CO-
PARTNERS D/B/U THE FIRM NAME AND STYLE OF
LEWITTES & SONS
For Revision or Refund of Unincorporated
Business Taxes under Article 16-A of
the Tax Law for the fiscal years ended
July 31, 1947, July 31, 1948, and July 31,
1949.

DETERMINATION

William Lewittes, David Lewittes, Morris Lewittes, Israel
Lewittes, Bertha Lewittes, Charlotte Lewittes, Fannie Lewittes and
Sara Lewittes, individually and as co-partners doing business under
the firm name and style of Lewittes & Sons, filed applications for
revision or refund of unincorporated business taxes assessed under
Article 16-A of the Tax Law for the fiscal years ended July 31,
1947, July 31, 1948, and July 31, 1949. A formal hearing was
held at the offices of the State Tax Commission in the City of
New York, on June 24, 1957, before Samuel Michelson, Hearing
Officer. David Lewittes, one of the member partners, appeared and
was represented by Aaron Lewittes, Esq., Sidney Bender, Esq., and
A. Freydborg, C.P.A.

FINDINGS OF FACT

1. Taxpayers filed income tax returns under Article 16-A of
the Tax Law for the taxable periods ended July 31, 1947, to 1949
inclusive with respect to the income from a furniture business;
and separate partnership information returns under Article 16 of

the Tax Law for the same periods with respect to rental income from office buildings.

2. On March 12, 1951, the Department of Taxation and Finance issued notices of additional assessment numbered AA21378 and AA21379 covering the fiscal years of July 31, 1947, and July 31, 1948, respectively in the amounts of \$1,092.22 and \$1,615.69.

The assessments were based in part on a finding by the bureau that the net rental income received from the business property should be combined with the net income from manufacturing activities in computing unincorporated business tax.

3. Lewittes & Sons was a family partnership engaged in manufacturing furniture. It rented offices and showrooms in New York City. On May 1, 1946, the partners in the furniture business purchased three properties in New York City as a real estate investment. Title was recorded in the name of Lewittes & Sons. Shortly thereafter the furniture business rented offices in one of the buildings. The taxpayers each contributed equally towards the purchase of the building. Their individual funds that were withdrawn from their capital accounts in the manufacturing business were used.

4. The partnerships maintained separate accounting records for the buildings. The depreciation of the buildings was not taken as an expense of the furniture business. The partnership kept separate bank accounts for the furniture business and the real estate operation. Separate employees were used and separate federal and state partnership returns were filed. The offices of the furniture business paid rent to the real estate operation and occupied 11% of the available floor space.

DETERMINATION

A. The rental income from the buildings owned by the partnerships is not interrelated with the partners' furniture business and thus not subject to the unincorporated business tax under Article 16-A.


B. The assessment for July 31, 1947, should be reduced to \$253.99, and the assessment for July 31, 1948, should be reduced to \$305.43. These amounts include Life Insurance premiums, selling, auto expenses and contribution disallowed that were not in issue. The assessment for 1949 should be reduced to \$96.65. This amount includes additional net income due to disallowance of hospitalization insurance and selling expenses and a disallowance of repairs which were not in issue.

C. The application is sustained and the assessments are sustained in part.


DATED: Albany, New York

April 14, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER