

STATE OF NEW YORK
STATE TAX COMMISSION

Liberman
1971
16A

In the Matter of the Petition

of

MAX R. LIBERMAN

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)) 1958 & 1959 :

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

State of New York
County of Albany

Linda Wilson , 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 22nd day of February , 19⁷¹, she served the within
Notice of Decision (or Determination) by (certified) mail upon MAX R.

LIBERMAN (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Max R. Liberman
400 East 52nd Street
New York, New York 10022

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

22nd day of February , 1971.

Joyce A. Van Patten

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MAX R. LIBERMAN

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) 1958 & 1959 :

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

State of New York
County of Albany

Linda Wilson, 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 22nd day of February, 19⁷¹, she served the within
Notice of Decision (or Determination) by (certified) mail upon ARCHIE

WILLIAMS (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Archie Williams
16 Court Street
Brooklyn, 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

22nd day of February, 1971.

Joseph S. L. Tatten

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Application :
of :
MAX R. LIBERMAN : DETERMINATION
for Revision or Refund of Unincorporated :
Business Taxes under Article 16-A of the :
Tax Law for the years 1958 and 1959 :
:

The taxpayer having filed applications pursuant to Sections 386j and 374 of the Tax Law for revision of notices of assessments dated July 21, 1965, for additional unincorporated business taxes due under Article 16-A of the Tax Law for the years 1958 and 1959 and such applications having been denied and a hearing thereon having been duly demanded and held before Nigel G. Wright, Hearing Officer, and the record having been duly examined and considered,

The State Tax Commission hereby

FINDS:

1. The sole issue herein is whether the taxpayer is subject to the unincorporated business tax or whether he is exempt therefrom by reason of being an employee and thus not engaged in an unincorporated business (Tax Law Section 386). The amounts of tax involved, otherwise due, are not in dispute.

2. The assessment asserted for 1958 is in the amount of \$845.00 and for 1959 is \$1,054.78, both exclusive of interest or penalty.

3. The taxpayer is engaged in the sale of merchandise for Reider Shoe Manufacturing Co., Inc., a manufacturer of girls' shoes and has been so engaged since 1940. He did not sell for anyone else.

4. Taxpayer had a territory covering the eastern seaboard from Maine to Florida and east to Altoona, Pennsylvania. Mr. Liberman's efforts produced 75% of the sales of the company. Richard Reider, in the midwest, produced the remainder of the business.

5. Mr. Lieberman's contract was renewable in January from year to year. He received straight commission on his sales. Creation of "house accounts", though, could take place at any time during the term of the contract.

6. Taxpayer also had duties to advise with respect to styling and merchandising. Taxpayer received an overriding commission on all sales of the company to compensate him for his extra duties in styling and his extra costs in maintaining a New York office.

7. Reider deducts both Social Security tax and disability benefits taxes from the commissions paid to Mr. Liberman. They do not deduct for Federal or New York income taxes.

8. The taxpayer uses office space at Room 617 in the Marbridge Building, 47 West 34th Street, New York City, a building occupied principally by the shoe industry. The lease for this office was for a term of two or three years and was in taxpayer's name. Taxpayer paid the rent. The taxpayer paid part of the cost of furnishing this office in 1940 and of refurnishing it in 1955.

9. Both Reider's and taxpayer's names appear on the directory in the lobby of the office building. The lettering on the office door states "Reider Shoe Co., Inc." and in smaller print "Rep. by M. R. Liberman". Taxpayer uses letterheads furnished by Reider with only Reider's name thereon. Taxpayer has no letterhead of his own. The telephone in the office is listed in Reider's name and the secretary answers in Reider's name. The telephone is also listed in taxpayer's name with a business designation but with no identification of such business.

10. Mr. Liberman had to be in the office and keep it open fulltime when he was not traveling. He was traveling outside of New York City from 35 to 45% of the time. Reider demanded that Mr. Liberman employ a secretary and can and has demanded that the secretary be fired. Mr. Liberman pays the secretary. All taxes are withheld by the taxpayer

from the secretary's salary. Taxpayer greeted, and entertained visiting officers of Reider at the New York office. He displayed merchandise to visiting buyers at the New York office but the orders would be credited to the accounts of other regular salesmen. Two other salesmen for Reider operated out of the New York office. Reider, not Mr. Liberman, hired and fired them but Mr. Liberman instructed them.

11. Mr. Liberman was held to be exempt from the then existing New York City gross receipts tax and no amounts for such tax were deducted on his other tax returns. The same issues litigated herein were litigated before the Commission for three prior taxable years -- 1955, 1956, and 1957 - and resulted in a determination dated July 7, 1964, adverse to the taxpayer. The taxpayer's work was substantially the same during 1955 through 1957 as it was during the years here involved.

Upon the foregoing findings and all the evidence in the case

The State Tax Commission hereby

DETERMINES:

(A) The taxpayer has not carried the burden of proof to show that he is an employee or otherwise is not engaged in an unincorporated business.

(B) The assessments are valid and do not contain taxes or other charges which could not have been lawfully demanded and the application for revision thereof is denied.

DATED: Albany, New York

January 13, 1970

STATE TAX COMMISSION

COMMISSIONER

James Manley

COMMISSIONER

Milton Korman

COMMISSIONER