

STATE OF NEW YORK
STATE TAX COMMISSION

Semenetz v. Hoge
U.B.T. No. 23

In the Matter of the Petition

of

GEORGE SEMENETZ

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
and 1963

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 18th day of March, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon JEROME
HORN, C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jerome Horn, C.P.A.
200 Park Avenue South
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

18th day of March, 1971

Martha Furaro

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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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 18th day of March, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon GEORGE SEMENETZ

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: George Semenetz
33-45 161st Street
Flushing, 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

18th day of March, 1971.

Martha J. Jones

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
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| of | : | |
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| GEORGE SEMENETZ | : | DECISION |
| for Redetermination of Deficiency or | : | |
| for Refund of Unincorporated Business | : | |
| Tax under Article 23 of the Tax Law | : | |
| for the Years 1961, 1962 and 1963. | : | |

Petitioner, George Semenetz, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1961, 1962 and 1963 (File #3-6253884). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on January 21, 1971, at 10:45 A.M. Petitioner, appeared by Jerome Horn, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of Counsel). At the formal hearing, petitioner's representative requested that the matter be decided on the material and documents heretofore submitted and waived any further formal hearing proceedings.

FINDINGS OF FACT

1. Petitioner, George Semenetz and his wife filed New York State income tax resident returns for the years 1961, 1962 and 1963. He did not file New York State unincorporated business tax returns for said years.

2. On December 12, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, George Semenetz, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1961, 1962 and 1963 upon the grounds that his activities were tantamount to those of an independent agent and, therefore, 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 \$5,119.09.

3. Petitioner, George Semenetz, was a paper box salesman during the years 1961, 1962 and 1963. During said years, he represented five to seven firms in the sale of boxes and related supplies. Two of the firms were affiliated. The items sold by him for each firm were non-competitive. He also conducted an unincorporated business as a paper box jobber under the name of "George Semenetz Co."

4. During the years 1961, 1962 and 1963, two of the five firms for whom petitioner, George Semenetz, sold merchandise, withheld Federal and New York State income taxes and Social Security taxes from the commissions paid to him. Taxes were withheld on approximately 30% of his commission income during the years 1961 and 1962 and on approximately 50% during the year 1963. One of the firms paid unemployment insurance on his behalf. He deducted from his commission income business expenses equaling approximately 25% of his commission income during the years 1961 and 1962 and approximately 30% during the year 1963. The firms for whom he sold merchandise did not exercise any control or supervision over his sales activities or techniques or to the time devoted to sales.

5. Petitioner, George Semenetz, conceded that the Federal adjustments affecting business income for the years 1961, 1962 and 1963 were properly assessed.

CONCLUSIONS OF LAW

A. That the income received by petitioner, George Semenetz, from the firms he represented during the years 1961, 1962 and 1963 constituted receipts from his regular business of selling paper boxes and related supplies and not compensation as an employee

exempt from the 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, George Semenetz, during the years 1961, 1962 and 1963 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 federal adjustments affecting business income for the years 1961, 1962 and 1963 were properly included in petitioner, George Semenetz's business income for unincorporated business tax purposes.

D. That the petition of George Semenetz is denied and the Notice of Deficiency issued December 12, 1966, is sustained.

DATED: Albany, New York
March 16, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER