

STATE OF NEW YORK
STATE TAX COMMISSION

Sweet Emanuel
U.B.T.
1971

In the Matter of the Petition

of

EMANUEL SWEET

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) 1962 - 1965 :

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 16th day of August, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon EMANUEL SWEET

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Emanuel Sweet
156 Fifth 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

16th day of August, 1971

Linda Wilson

Notary Public

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
EMANUEL SWEET : DECISION
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Years 1962 through 1965. :

Emanuel Sweet filed a petition under section 689 of the Tax Law for the redetermination of deficiencies in unincorporated business taxes under Article 23 of the Tax Law for the years 1962 through 1965.

A hearing was duly held on November 19, 1970, at the offices of the State Tax Commission at 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Morris Marks, Esq., appeared for the petitioner and Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner, a sales representative, is an independent contractor and subject to the unincorporated business tax or whether he is an employee and exempt from said tax.

FINDINGS OF FACT

1. Petitioner has been associated since 1955, with Super Glass Corp. of 1020 East 48th Street, Brooklyn, New York. They manufacture hand blown glass in shapes useful for lamps and sell to lamp manufacturers.

2. Petitioner's sidelines are for Martin Castings, Inc., Metropolis Metal Spinning and Stamping Company, Inc. and Ember Plating Corp. These companies manufacture parts used in the

manufacture of lamps. Petitioner was unable to show what part of his total sales came from these sidelines. He admitted that all of his expenses were incurred in connection with the business of Super Glass.

3. Prior to 1962, petitioner had a written contract with Super Glass calling for him to work fulltime and exclusively for Super Glass with the exception that he could handle a named sideline. He was to receive \$150.00 per week plus 1 1/2% of the net sales of the company but was to receive no reimbursement for expenses except for gas and oil. Super Glass withheld both social security tax and income taxes. For 1962 through 1965, petitioner exhibited no written contract. He did not state what his commission was but did state that by 1970 his quantity had risen to \$500.00 per week towards a commission based only on his own sales. He stated he had never received from Super Glass any more than this quantity. He is now allowed to handle more sidelines. For 1962 and later years, Super Glass did not withhold social security or income taxes. Petitioner pays his own self-employment tax. At present, Super Glass has two other salesmen in other parts of the country.

4. Petitioner maintained a showroom at 245 East 19th Street, Manhattan. Petitioner displayed both Super Glass products and his other lines. Petitioner holds the annual lease for this showroom. Petitioner would service buyers from other parts of the country at this showroom and at the company plant. He received no commission for any sales made to such buyers.

5. Petitioner testified that he must go into the office of Super Glass about three times a week and that on days when he wasn't

there he would phone in about five or six times a day. He would spend about a month of each year out-of-town. At times, when Super Glass had enough orders, he would remain fulltime at the plant answering phone calls and correspondence. His vacations were taken only when Super Glass was closed.

CONCLUSIONS OF LAW

Petitioner has not carried the burden of proof that from 1962 through 1965 he was an employee of Super Glass. Furthermore, the lack of evidence concerning the precise amount of compensation received from Super Glass would alone defeat petitioner's claim.


DECISION

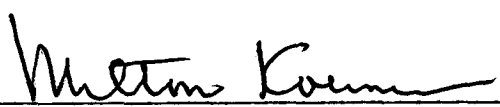
The petition is denied and the deficiencies are affirmed together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
August 16, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER