

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HYMAN LEWIS

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) 1965

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

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 26th day of May, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Hyman Lewis

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

825 Prescott Street
North Valley Stream, New York 11580

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

26th day of May, 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 26th day of May, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert Falk, 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: Robert Falk, C.P.A.
261 Broadway
New York, New York 10007

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(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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26th day of May, 1972

Rae Zimmerman

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

May 26, 1972

Hyman Lewis
825 Prescott Street
North Valley Stream, New York 11580

Dear Mr. Lewis:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to section(s)
722 of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **4 Months** after the date of this notice.

Any inquiries concerning the computation of tax due or
refund allowed in accordance with this decision or
concerning any other matter relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright

Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HYMAN LEWIS	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1965.	:	

Hyman Lewis filed a petition pursuant to sections 722 and 689 of the Tax Law for a redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the year 1965.

A hearing was held on July 28, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. Robert Falk, C.P.A. represented petitioner. Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel) represented the Income Tax Bureau.

The record of such hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner, a sales representative, is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner resided in Valley Stream, Long Island. He was a sales representative for Bergen Laboratories, Inc. of Paterson, New Jersey, a manufacturer of electric motors and electronic equipment. He spends very little time at the company offices though

occasionally he is requested to attend meetings with engineers and management.

2. Petitioner covered a territory of New York State and Fairfield County, Connecticut. He does not report his daily schedule to the company but is expected to work full time.

3. Neither taxes nor social security were withheld from petitioner's salary. Petitioner paid the self-employment tax on Schedule "C-3" of his federal return. He was paid by Bergen on a commission basis.

4. Petitioner uses a room in his home as an office. He used it for paper work and setting up appointments by phone. He deducted \$600 on his federal return for the office and \$400 for the telephone. He paid for his own stationery and supplies. He incurred substantial travel expenses for which he was not reimbursed.

5. Petitioner did not appear or testify at the hearing.

6. The deficiency in issue is dated September 28, 1970, amounts to \$505.99 with interest of \$135.17 and a penalty of \$126.50 imposed under section 685(a) of the Tax Law for a total of \$767.66.

CONCLUSIONS OF LAW

Especially in view of his absence from the hearing, the petitioner has not carried the burden of proof that he is subject to direction and control and exempt from the tax (see Hardy v. Murphy 29 AD 2d 1038; Restatement of the Law of Agency 2d section 220).

DECISION

The petition is denied and the deficiency is sustained together with such interest, if any, as may be due under section 689 of the Tax Law.

DATED: Albany, New York
May 26, 1972

STATE TAX COMMISSION

COMMISSIONER

Benjamin M. Hanley
COMMISSIONER

Milton Koenig
COMMISSIONER