

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULES & MOLLIE LEVENSTEIN

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 and
1962.

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

State of New York
County of Albany

Lynn 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 21st day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon JULES & MOLLIE LEVENSTEIN (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jules and Mollie Levenstein
450 West End 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

21st day of March, 1972

Rae Zimmerman

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

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State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 21st day of March, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon GEORGE NEIMETH

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

wrapper addressed as follows: George Neimeth
23-35 Bell Blvd.
Bayside, 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

21st day of March, 1972.

Rae Zimmerman
Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO

COMMISSION

ADDRESS YOUR REPLY TO

DATE: Albany, New York
March 21, 1972

Jules and Mollie Levenstein
450 West End Avenue
New York, New York

Dear Sir and Madam:

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

Please take further notice that pursuant to **section 722**
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 relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

L. Robert Leisner

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
JULES & MOLLIE LEVENSTEIN : DECISION
for a Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Year 1961 and 1962. :

Jules and Mollie Levenstein petitioned for a redetermination of a deficiency in unincorporated business taxes for the years 1961 and 1962. A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 1, 1970. Petitioners were represented by Herbert J. Hirschhorn, Esq. The Income Tax Bureau was represented by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUES

I. Were the activities of Jules Levenstein as a salesman subject to unincorporated business taxes?

II. Is Mollie Levenstein, his wife, liable for unincorporated business taxes?

FINDINGS OF FACT

1. Petitioners, Jules Levenstein and Mollie Levenstein, timely filed New York State income tax returns, but did not file New York State unincorporated business tax returns for the years 1961 and 1962.

2. Notices of determinations of deficiency in unincorporated business tax were issued on May 18, 1965, under File No. 1-4933705 against Jules Levenstein for the year 1961, and on March 29, 1965, against petitioners under File No. 2-3804708 for the year 1962.

3. The Income Tax Bureau determined that Jules Levenstein's activities as a salesman were subject to unincorporated business

tax for the years 1961 and 1962.

4. The petition for redetermination of the deficiencies was timely filed.

5. Mollie Levenstein did not take part in any unincorporated business during 1961 and 1962.

6. In 1961 and 1962, petitioner, Jules Levenstein, was a salesman for Silvray-litecraft Corporation and the Simes Company. In 1962, he also represented Inter Monarch Company. The lines were noncompeting. Petitioner went to the offices of the concerns he represented, or called in and was told what calls to make. He reported the results of his call within a day or two. Petitioner had no stationery and no phone listing. All correspondence and calls were directed to the concerns the petitioner represented.

7. During one year in issue for example, Jules Levenstein filed a business Schedule "C" as part of his Federal tax return deducting office expense of \$1,024.50, telephone expense of \$419.20, display expense of \$1,600 and commissions of \$1,400. The expenses were not reimbursed by any concerns he represented.

8. Orders were accepted by the companies, credit was passed upon by the companies and billings were made by them. Petitioner was paid on a commission basis, and he received no pay unless he made sales. The companies did not deduct social security or withholding taxes.

CONCLUSIONS OF LAW

A. The sales activities and the commissions of Jules Levenstein in 1961 and 1962 were subject to unincorporated business tax.

B. Mollie Levenstein was not engaged in an unincorporated business in 1961 and 1962 and she has no liability for any unincorporated business tax.

C. It is determined that there is no deficiency against Mollie Levenstein.

D. The petition is in all other respects denied, and the determinations of deficiencies against Jules Levenstein are sustained.

E. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York
March 21, 1972

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce W. Haley
COMMISSIONER

Melvin Koenig
COMMISSIONER