

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
IRVING LOBEL

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) 1955, 1956, :
1957 & 1959

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 12th day of July, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Irving Lobel

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

wrapper addressed as follows: Irving Lobel
64-34 102nd Street
Forest Hills, 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

12th day of July, 1972.

Martha Funaro
James S. Van Patten



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

July 12, 1972

**Irving Lobel
64-34 102nd Street
Forest Hills, New York**

Dear Mr. Lobel:

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

Please take further notice that pursuant to section(s)
386j of the Tax Law any proceeding
in court to review an adverse decision must be commenced
within **90 Days** 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,

EDWARD ROOK
~~XXXXXXXXXXXX~~
**Secretary to the
State Tax Commission**

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Applications	:	
of	:	
IRVING LOBEL	:	DETERMINATION
for Revision or Refund of Unincorporated	:	
Business Taxes under Article 16-A of the	:	
Tax Law for the Years 1955, 1956, 1957	:	
and 1959	:	

The petitioner, having filed applications for revision or refund of taxes paid under Article 16-A of the Tax Law for the years 1955, 1956, 1957 and 1959, and a hearing having been held before Vincent P. Molineaux, Hearing Officer, on February 19, 1965, and the record and exhibits having been duly examined and considered,

The State Tax Commission finds:

(1) That the petitioner filed personal income tax returns and unincorporated business tax returns for the years 1955, 1956, 1957 and 1959 upon which the tax shown to be due was paid. The amount included self-assessed unincorporated business taxes for each of the stated years.

(2) That on August 11, 1961, petitioner filed applications for refund of \$96.39 paid as unincorporated business tax for the year 1955; \$174.97 paid for the year 1956, and \$240.05 paid for the year 1957; that said applications for refund were not filed within two years from the time of the filing of the returns, that is, April 15, 1956, 1957 and 1958 for each of the aforesaid years, respectively.

(3) That on March 27, 1962, the taxpayer filed a timely application for refund of \$337.28 paid as unincorporated business taxes for the year 1959.

(4) That petitioner was a professional solicitor and was registered as such under section 482-h of the Social Welfare Law and was during 1959 engaged as such by Philip A. Weiss and Associates, who is registered with the Department of Social Welfare as a professional fund raiser.

(5) That pursuant to Article 10-A of the Social Welfare Law, a professional solicitor must be employed or retained for compensation by a professional fund raiser (Social Welfare Law, sections 482, 482-e and 482-h).

(6) That the taxpayer's earnings as a professional solicitor were entirely on a commission basis.

(7) That for the year 1959, taxpayer claimed over \$9,000.00 in business expenses.

(8) That Philip A. Weiss and Associates made no deductions for social security taxes, unemployment or withholding taxes from the taxpayer's commissions.

(9) That taxpayer's working time was in no way regulated and was not otherwise supervised except that he was required to account for the proceeds of his solicitation.

Upon the foregoing findings, the State Tax Commission hereby
DETERMINES:

(A) That the taxpayer failed to file timely applications for refund of taxes for the years 1955, 1956 and 1957 as required by section 374 of the Tax Law; that accordingly, no refund of taxes paid

for such years may be granted and that the taxpayer's application for refund of taxes paid for such years is hereby denied.

(B) That section 482-e of the Social Welfare Law defines a professional fund solicitor as one "who is employed or retained for compensation by a professional fund raiser". It is clear that one who is retained for compensation may be so retained in his capacity as an independent contractor. Even if this phrase had been omitted, the entire context of the provisions of the Social Welfare Law relating to public solicitations for charity would indicate that it was the intent of the framers of the statute to fix responsibility and accountability in the fund raiser rather than to strictly define the relationship of the solicitor to the fund raiser.

(C) That with respect to the year 1959, the income of the petitioner as a professional solicitor was in the nature of earnings as an independent contractor subject to unincorporated business tax under Article 16-A of the Tax Law.

(D) That the unincorporated business tax for the year 1959 was correctly paid and the petition is denied.

And IT IS SO ORDERED.

DATED: Albany, New York
July 12, 1972.

STATE TAX COMMISSION

Norman Gelman

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Koerner

COMMISSIONER