

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING LOBELL

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 through:
1965.

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 23rd day of June , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon IRVING LOBELL
(representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Irving Lobell
1776 Mt. Everest Lane
Toms River, New Jersey 08753

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

23rd day of June , 19 72

Rae Zimmerman

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING LOBELL

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 through:
1965.

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 23rd day of June, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon SEYMOUR S. KANE, ESQ. and HARVEY (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Seymour S. Kane, Esq. and Harvey Schein, Esq.
51 Madison Avenue
New York, New York 10010
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

23rd day of June, 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

DATED: Albany, New York
June 23, 1972

Irving Lobell
1776 Mt. Everest Lane
Toms River, New Jersey 08753

Dear Mr. Lobell:

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 deci-
sion must be commenced within **4 months**
from 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 relative
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

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
IRVING LOBELL	:	DECISION
for the Redetermination of Deficiencies	:	
or for Refund of Unincorporated Business	:	
Taxes due under Article 23 of the Tax Law	:	
for the Years 1962 through 1965.	:	

Irving Lobell filed a petition under sections 722 and 689 of the Tax Law for the redetermination of deficiencies in unincorporated business tax imposed by Article 23 of the Tax Law for the years 1962 through 1965. A hearing was held on April 7, 1971, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York. Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau and Harvey Schein, Esq., represented the petitioner.

ISSUE

The issue in this case is whether petitioner, an outside salesman, is an employee exempt from unincorporated business tax or an independent contractor subject to tax.

FINDINGS OF FACT

1. Mr. Lobell is a multiple line salesman of women's clothes. In the years in question he sold primarily for Ira Rentner, Inc. of 498 Seventh Avenue, New York, New York, and had three sidelines: Illsa Engel, Hong Kong House, and Sweetlo of Hong Kong.

2. Mr. Lobell has been a salesman for Ira Rentner, Inc. of 498 Seventh Avenue, New York, New York, from 1950. He received a guaranteed salary of \$150 a week against commissions of 5% on sales. He was not reimbursed for expenses. He reported directly to Ira Rentner.

3. Mr. Lobell covered a territory for Rentner from Washington, D.C., and Baltimore, Maryland to Massachusetts, Connecticut and Rhode Island including Philadelphia and upstate New York. It did not include New York City, Long Island or New Jersey. Rentner had three or four other salesmen to cover the rest of the country.

4. Rentner had four "lines" each year, one for each season. At the start of each seasonal line, Mr. Lobell would be in the Rentner showroom for 3 1/2 or 4 weeks. He received commissions on all sales made in the showroom to customers in his territory. After each show, Mr. Lobell would go on the road to contact people who had not come to the show.

5. Rentner did not withhold taxes or social security from Mr. Lobell's compensation during the years in question although prior to 1952, Rentner had withheld. In 1966, Mr. Lobell prevailed upon Rentner to begin withholding again. In 1965, Elsa Engel withheld taxes at Mr. Lobell's request.

6. Mr. Lobell used space in his home to store records and deducted the expense thereof on his income tax return.

7. Mr. Lobell employed no assistants during these years except for his daughter whom he had employed for two months for family reasons.

8. Mr. Lobell averaged a net income of \$17,000 to \$18,000 each year. In 1964, Mr. Lobell had gross receipts of \$24,401 and expenses of \$7,314 reported on Federal Schedule "C". These included \$5,615 for travel. He paid self-employment tax on all of his Schedule "C" income. He estimates that 75% of his sales were for Rentner but he has submitted no more specific breakdown of sales.

CONCLUSIONS OF LAW

Petitioner has not carried the burden of proof that he is an employee and exempt from tax. The withholding of taxes by a principal especially if done at the request of the taxpayer, is not itself sufficient to show that in fact the required employer-employee relationship existed so as to justify either the withholding or an exemption from the unincorporated business tax. There is not the slightest doubt that Mr. Lobell was independent with respect to his sidelines.

The failure of Mr. Lobell to submit records showing his earnings from his main line separately from his sidelines creates doubt that Mr. Lobell considered his status with respect to his main line to be any different from his status with respect to his sidelines and, in any event, makes a computation of tax on only his sidelines income impossible.

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

June 23, 1972.

STATE TAX COMMISSION

Norman J. Sullivan
COMMISSIONER

Glenn Manley
COMMISSIONER

Milton Krumm
COMMISSIONER