

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT B. SMALLWOOD

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) 1964, 1965 &
1966

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 21st day of August, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Robert B.

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

wrapper addressed as follows: Robert B. Smallwood
465 Park Avenue
New York, New York 10021

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 August, 1972.

Lynn Wilson

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 21st day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon David R. Weisman

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

wrapper addressed as follows: David R. Weisman
c/o Weisman & Company
4 West 58th Street
New York, New York 10019

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 August , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

August 21, 1972

Robert B. Smallwood
465 Park Avenue
New York, New York 10021

Dear Mr. Smallwood:

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,


Paul B. Coburn

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

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|---------------------------------------|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| ROBERT B. SMALLWOOD | : | DECISION |
| for Redetermination of Deficiency or | : | |
| for Refund of Unincorporated Business | : | |
| Tax under Article 23 of the Tax Law | : | |
| for the Years 1964, 1965 and 1966. | : | |

Petitioner, Robert B. Smallwood, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964, 1965 and 1966. (File No. 66096918). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on February 15, 1972, at 10:45 A.M. Weisman & Company by David R. Weisman appeared for petitioner. Saul Heckelman, Esq. (Alexander Weiss, Esq., of Counsel) appeared for the Income Tax Bureau.

ISSUES

I. Did petitioner, Robert B. Smallwood's activities as a consultant for Thomas J. Lipton, Inc. during the years 1964, 1965 and 1966 constitute the carrying on of an unincorporated business?

II. Did pension payments received by petitioner, Robert B. Smallwood, from Connecticut General Life Insurance Company during the years 1964, 1965 and 1966 constitute income subject to the unincorporated business tax?

III. Did petitioner, Robert B. Smallwood, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1965 and 1966?

FINDINGS OF FACT

1. Petitioner, Robert B. Smallwood, filed New York State income tax resident returns for the years 1964, 1965 and 1966. He did not file New York State unincorporated business tax returns for said years.

2. On November 25, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Robert B. Smallwood, imposing unincorporated business tax upon the income received by him from Thomas J. Lipton, Inc. and Connecticut General Life Insurance Company during the years 1964, 1965 and 1966. It also increased business income for the years 1964 and 1965 as a result of federal audits of his federal income tax returns for said years. These adjustments are not being contested by him. It further imposed a penalty pursuant to section 685(a) of the Tax Law in the sum of \$397.84 for the year 1965 and \$329.63 for the year 1966. It also allowed a credit of \$1,279.78 for unincorporated business tax previously paid by him on account of his unincorporated business tax liability for the year 1964. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$4,453.76.

3. Petitioner, Robert B. Smallwood, was President, Chairman of the Board of Directors and Chief Executive Officer of Thomas J. Lipton, Inc. from 1949 to December 31, 1958. On December 31, 1958, he retired from his employment as an officer and director of said corporation pursuant to its retirement policy.

4. On December 31, 1958, petitioner, Robert B. Smallwood, entered into a written agreement with Thomas J. Lipton, Inc. wherein he was retained to perform such advisory and consultive services as it might request. In addition to the financial considerations, he agreed not to compete with the corporation. Pursuant to the terms of said agreement he received from the corporation consultant fees of \$39,999.96 in 1964, \$41,150.87 in 1965 and \$40,000.00 in 1966. It did not withhold Federal and New York State income taxes and social security tax from the compensation paid to him.

5. Prior to December 31, 1958, Thomas J. Lipton, Inc. had established a pension plan for its employees pursuant to qualified pension plan between it and Connecticut General Life Insurance Company. Petitioner, Robert B. Smallwood, became eligible for pension benefits under the pension plan upon his retirement on December 31, 1958. He was not required to render any services in order to receive the pension benefits. He received pension payments from Connecticut General Life Insurance Company totaling \$19,816.80 in 1964, \$20,169.36 in 1965 and \$20,169.36 in 1966.

6. Petitioner, Robert B. Smallwood, was advised by his accountants that he was not required to file New York State unincorporated business tax returns for the years 1965 and 1966.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Robert B. Smallwood, from Thomas J. Lipton, Inc. during the years 1964, 1965 and 1966 constituted receipts from his regular business as a consultant for said corporation and not compensation as an employee exempt from

the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Robert B. Smallwood, during the years 1964, 1965 and 1966 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the income received by petitioner Robert B. Smallwood, from Connecticut General Life Insurance Company during the years 1964, 1965 and 1966 constituted pension payments received by virtue of services rendered as an employee prior to retirement and therefore did not constitute business income subject to the unincorporated business tax.


D. That petitioner, Robert B. Smallwood, had reasonable cause for not filing unincorporated business tax returns for the years 1965 and 1966 and therefore the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

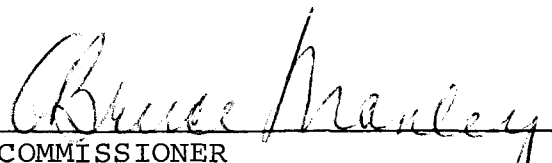
E. That the petition of Robert B. Smallwood is granted to the extent of reducing gross business income for the year 1964 from \$59,816.76 to \$39,999.96, for the year 1965 from \$61,320.23 to \$41,150.87 and for the year 1966 from \$60,169.36 to \$40,000.00 and of reducing unincorporated business tax due for the year 1964 from \$1,641.19 to \$900.43, for the year 1965 from \$1,591.36 to \$806.97 and for the year 1966 from \$1,318.53 to \$529.42 together with such interest as may be lawfully due and less credit for \$1,279.78 heretofore paid on account of said tax and of

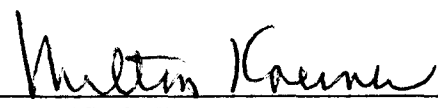
cancelling the penalty imposed pursuant to section 685(a) of the Tax Law in the sum of \$397.84 for the year 1965 and \$329.63 for the year 1966, and the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued November 25, 1968, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
August 21, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER