

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
HAROLD E. SUNDBERG

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

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, 1966, 1967,
1968 and 1969.

State of New York
County of Albany

Rae Zimmerman, 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 6th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Harold E.
Sundberg

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

Harold E. Sundberg
121 Woodbridge Avenue
Buffalo, N.Y. 14214

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

6th day of April, 1972.

Lynn Wilson

Rae Zimmerman



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

Harold E. Sundberg
121 Woodbridge Avenue
Buffalo, N Y. 14214

Dear Mr. Sundberg:

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,

L. Robert Laisner
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD E. SUNDBERG	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1965, 1966, 1967, 1968 and 1969.	:	

Harold E. Sundberg having filed claims for refunds of unincorporated business taxes for the years 1965 through 1969. On denial of the refund claim, the taxpayer demanded a hearing. On June 24, 1970, a formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, State Office Building, Buffalo, New York. The taxpayer appeared in person. The Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Were the activities of Harold E. Sundberg subject to unincorporated business tax in the years 1965, 1966, 1967, 1968 and 1969?

FINDINGS OF FACT

1. The taxpayer filed personal income tax returns and unincorporated business tax returns for each of the years 1965 through 1969 on which returns he reported income from his activities as a representative of Philadelphia Gear Corporation, Orville Simpson Company, Comptor Company and Palmer Instruments, Inc. The taxpayer listed his activities on such returns as a sales engineer.

2. The taxpayer paid the unincorporated business taxes for each

year and filed claims for refund. The claims for refund were denied and the taxpayer timely petitioned for a hearing.

3. The taxpayer admitted at the hearing that he carried on his activities in the same form and manner as during the years 1961 through 1964. These years were considered by the commission in a decision dated June 30, 1969, involving unincorporated business taxes. The taxpayer contended that he did not carry on his activities as an independent contractor but as an employee.

4. During the years involved the taxpayer maintained his own office and telephone and filed returns as a self-employed person for federal tax purposes.

5. None of the four concerns represented by the taxpayer, to wit, Philadelphia Gear Corporation, Orville Simpson Company, the Comptor Company and Palmer Instruments, Inc. considered the taxpayer as an employee for social security purposes or for group insurance purposes.

6. The taxpayer was paid on a sales commission basis for rendering services to the four companies. The taxpayer agreed to promote the sales of the products of the four companies.

7. The taxpayer was not required to work any specific portion of his time for any of the companies and there was no agreement or understanding to that effect.

8. The concerns did not exercise close supervision and control over the manner in which the taxpayer carried on his activities in their behalf.

CONCLUSIONS OF LAW

A. The taxpayer carried on his activities during the years in issue as an independent sales agent rather than as an employee.

B. The activities of the taxpayer during the year involved were subject to the unincorporated business tax.

C. The denials of the claims for refunds for the years 1965, 1966, 1967, 1968 and 1969 are sustained.

DATED: Albany, New York

April 6, 1972.

STATE TAX COMMISSION

Corman Gallman

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Korman

COMMISSIONER