

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LLOYD M. and ARLENE M. GOLDFARB

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 and:
1967.

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 19th day of December, 1973, she served the within Notice of Decision (or Determination) by (certified) mail upon LLOYD M. and ARLENE M. GOLDFARB (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid


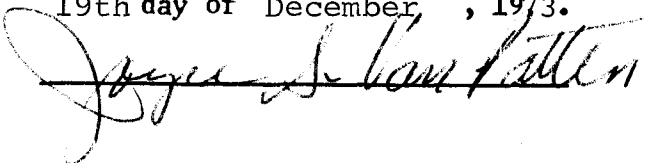
wrapper addressed as follows: Mr. and Mrs. Lloyd M. Goldfarb
49 Maria Drive
Hillsdale, New Jersey

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

19th day of December, 1973.



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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION
~~MILTON KOERNER~~ **Mario A. Procaccino**
~~PRESIDENT~~

A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
December 19, 1973

Mr. and Mrs. Lloyd M. Goldfarb
49 Maria Drive
Hillsdale, New Jersey

Dear Mr. and Mrs. Goldfarb:

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

Please take further notice that pursuant to **section 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 relat-
ing 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

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LLOYD M. and ARLENE M. GOLDFARB	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

Lloyd M. and Arlene M. Goldfarb filed a petition under sections 689 and 722 of the Tax Law for a redetermination of a deficiency, issued under date of September 28, 1970, for unincorporated business taxes imposed by Article 23 of the Tax Law for the years 1965, 1966 and 1967.

A hearing was held on June 16, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner was not represented. The Income Tax Bureau was represented by Saul Heckelman, Esq. appearing by Francis X. Boylan, Esq., of Counsel. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner, a sales representative, is engaged in an unincorporated business.

FINDINGS OF FACT

1. Mr. Goldfarb is a sales representative for companies in the bridal wear field. He began in this business as a full

time representative of Edward E. Berger Inc. of 1385 Broadway, New York City. He left briefly to operate his own manufacturing business but later returned to Edward E. Berger Inc. and also to a firm owned by the same interests and on the same premises, Ondine Wraps, Inc. He was then allowed to represent Creations-by-Aria of the same address and Milady Bridals located at 499 Seventh Avenue as sidelines. In 1966 he had to drop Creations-by-Aria as he had begun to represent a competing line, Judy Formals Inc. also of the same address.

2. Judy Formals Inc. withheld taxes and social security for 1966 and 1967. At a later time they ceased this withholding. None of the other manufacturers ever withheld. There is no evidence that petitioner was ever covered for unemployment insurance or workmen's compensation.

3. Petitioners' territory was New England, New York State, and parts of Pennsylvania and Maryland.

4. Petitioner was not reimbursed for any expenses. These expenses amounted about one-fourth of his commission income. His commission income was approximately the same from each principal, counting Ondine Wraps Inc. and Edward E. Berger Inc. as one principal.

5. There is no specific evidence that any principal directed the details of petitioners' daily activities.

6. Petitioner relied on the advice of an accountant in not filing returns.

7. The deficiency in issue is in the amount of (for all three years) of \$1,535.43 plus interest of \$300.94 and a penalty

for failure to file a return of \$383.86 for a total of \$2,220.23.

CONCLUSIONS OF LAW


The petitioner has not carried the burden of proof that any of his principals had a right to control the method and manner of performance of his duties. He is therefore not an employee and is subject to tax. However the penalty is waived since petitioner had relied on competent advice.

DECISION


The deficiency, without the penalty which is hereby waived, is found due together with such interest as may be computed under section 684 of the Tax Law.

DATED: Albany, New York
December 19, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER