

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EDGAR MOONELIS

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

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 Edgar Moonelis

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

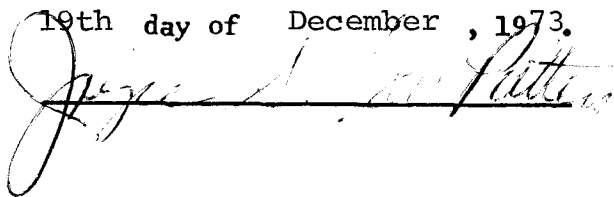
wrapper addressed as follows: Mr. Edgar Moonelis
77 Cooper Street
New York, New York 10034

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.





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STATE TAX COMMISSION

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EDGAR MOONELIS

For a Redetermination of a Deficiency or
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OF NOTICE OF DECISION
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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 , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Irwin Lehmann, C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Irwin Lehmann, C.P.A.
c/o Henry Warner & Co.
Empire State Building, 350 Fifth Avenue
New York, New York 10001
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.

Martha Funaro

James L. Blumenthal



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

Mario A. Procaccino,

~~XXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

December 19, 1973

Mr. Edgar Moonelis
77 Cooper Street
New York, New York 10034

Dear Mr. Moonelis:

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 :
EDGAR MOONELIS : DECISION
for a Redetermination of a Deficiency :
or for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Year 1965. :

Edgar Moonelis filed a petition under sections 722 and 689 of the Tax Law for the redetermination of a deficiency dated August 26, 1968, in the amount of \$230.38 plus a penalty, under section 685(a) for failure to file a return, of \$57.60 and interest of \$32.67 for a total of \$320.65 for unincorporated business tax under Article 23 of the Tax Law for the year 1965.

A hearing was duly held on February 6, 1973, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Irwin Lehmann, C.P.A., of Henry Warner & Co. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by James A. Scott, Esq. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether or not the petitioner is an independent contractor and subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner is a resident of New York and is a salesman representing three principals.

2(a). Petitioner received \$5,200.00 from Jack Hoenig, Inc. of 112 W. 34th Street, New York City, (who is now out of business) at



the rate of \$100.00 a week. He sold children's dresses for Jack Hoenig, Inc.

2(b). Petitioner received \$7,950.00 from Stylecraft Corp. of Copaigue, New York, from which Federal and New York income tax was withheld. He sold women's sportswear for them.

2(c). Petitioner received \$4,376.84 from "Miss Gotham" of 1407 Broadway, New York City, and \$1,485.02 from "Sparteen" of the same address. Miss Gotham and Spardeen are said to be trade names for the same corporation. He sold ladies' sweaters for Spardeen.

3. Petitioner declared the compensation from Stylecraft as salaries on his tax returns. The other compensation he reported as other income. His expenses attributable to this income he reported on his Federal return as "employee business expenses" on Part III, line 3 of page 2 of said return. These deductions amounted to \$8,935.54 of which \$925.37 was declared as attributable to "trade shows, advertising, dues and subscriptions". These amounts, however, have been reduced by the taxpayer as a result of a tax audit.

4. Though the representative gave some detail as to the petitioner's daily activities, the petitioner himself was not present at the hearing and so was not available either for his own testimony or for cross-examination.

5. Petitioner has not paid unincorporated business tax in prior years and no deficiency notice has been issued for those years.

CONCLUSIONS OF LAW

The petitioner has not carried the burden of proof that his principals had a right to control his activities. He therefore must be considered to be an independent contractor and subject to tax.

Even if he was an employee with respect to Stylecraft, that income would be includable in unincorporated business income under section 703(b) since petitioner was clearly independent with respect to the Miss Gotham and Spardeen lines.

The penalty must also be sustained. The mere fact that the Income Tax Bureau has not questioned petitioner's status in prior years is irrelevant since the tax is intended to be self-enforcing and at some time petitioner should have been aware of his legal obligations. At any rate, it is clear that petitioner should have filed at least on his income from Miss Gotham and Spardeen. The deficiency in issue is found to be correct and is 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