

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING ULMAN

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 :

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 20th day of July , 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon Irving Ulman

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Irving Ulman
301 East 75th Street
New York, New York

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

20th day of July , 1973.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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IRVING ULMAN

For a Redetermination of a Deficiency or
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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 20th day of July , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Alvin Ulman, 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: Alvin Ulman, C.P.A.
145 East 52nd Street
New York, New York

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

20th day of July , 1973.

Lynn Wilson

Martha Funaro



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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN,  PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 20, 1973

Irving Ulman
301 East 75th Street
New York, New York

Dear Mr. Ulman:

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 ULMAN	:	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 and 1966.	:	

Irving Ulman filed a petition for the redetermination of a deficiency issued under date of May 26, 1969, in the amount of \$952.74 with interest of \$157.44 and a penalty under section 685(a) of \$238.19 for a total of \$1,348.37 in unincorporated business taxes under Article 23 of the Tax Law for the years 1965 and 1966.

A hearing was duly held on October 18, 1972, before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York City.

Alvin Ulman, C.P.A. represented the petitioner. Saul Heckelman, Esq. appearing by Francis X. Boylan, Esq. represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether petitioner, a salesman, is an independent contractor and subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner is a sales representative in the clothing

industry. He represented Sidney Solomon, Inc. and certain other firms.

2. Sidney Solomon, Inc. of 175 Fifth Avenue, New York City, was the exclusive sales representative of Barry Worster Mills of York, England. Both companies were owned by Sidney Solomon, Inc. who spent most of his time in England. Petitioner earned \$7,896.58 from Sidney Solomon, Inc. and Barry Worster Mills together in 1965 (only \$600.00 of this was from Barry Worster Mills) and \$13,488.62 from Sidney Solomon, Inc. in 1966 (none from Barry Worster Mills).

3. Petitioner represented Sidney Solomon, Inc. nationwide except for the West Coast. He solicited orders from clothing manufacturers and distributors. He made frequent trips. Sidney Solomon, Inc. did not reimburse him for the travel expenses during the years in question. When not on a trip petitioner would be in charge of Sidney Solomon, Inc.'s New York City office where Sidney Solomon, Inc. employed one secretary.

4. Petitioner's other principals were about 40 clothing manufacturers for whom he would sell surplus goods to other manufacturers and to distributors. Petitioner considers himself a specialist in his knowledge of this market. He was paid a straight commission on which there was no withholding. He received \$23,584.14 from these principals in 1965 and \$12,426.91 in 1966.

5. Petitioner's expenses were \$6,219.13 in 1965 and \$8,970.00 in 1966.

6. Petitioner has been in the clothing industry for about 40 years. Petitioner was with Sidney Solomon, Inc. from 1965

through 1968 when he quit because of Sidney Solomon, Inc.'s refusal to pay travel expenses. In 1971 he rejoined Sidney Solomon, Inc. who agreed to pay partial travel expenses and who also withheld taxes from his compensation.

7. Petitioner did not file returns for the years in question. He had filed in some previous years but had stopped on advice of an accountant.


CONCLUSIONS OF LAW

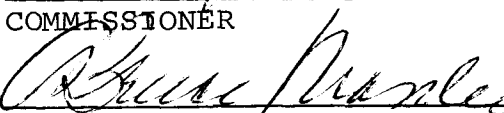
The petitioner has not carried the burden of proof that he is exempt from tax. It is so clear that petitioner is not an employee with respect to the principals for whom he sold surplus goods; the penalty for failure to file a return cannot be waived.

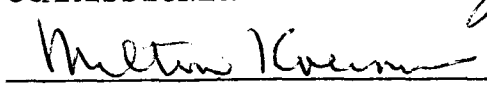
The deficiency including the penalty is found to be correct and is due together with additional interest as computed under section 684 of the Tax Law.

DATED: Albany, New York
July 20, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER