


STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR COHEN

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) 1961 through 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 6th day of March , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Seymour Cohen

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

2106 82nd Street
Brooklyn, New York 11214

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 March , 1974.



Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR COHEN

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) 1961 through 1965

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 6th day of March, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Julius Krumholz, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Julius Krumholz, Esq.
1133 Broadway
New York, New York

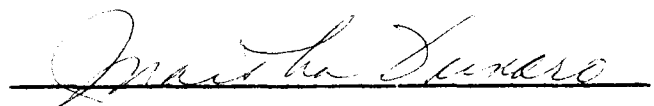
and by depositing same enclosed in a postpaid properly addressed wrapper in a
(post office or official depository) under the exclusive care and custody of
the United States Post Office Department within the State of New York.

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

6th day of March, 1974.







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

~~KOERNER, K. G. KOERNER~~ Mario A. Procaccino,
PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 6, 1974

Mr. Seymour Cohen
2106 82nd Street
Brooklyn, New York 11214

Dear Mr. Cohen:

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 :
SEYMOUR COHEN : DECISION
for a Redetermination of a Deficiency :
or for Refund of Unincorporated :
Business Tax under Article 23 of the :
Tax Law for the Years 1961 through :
1965. :

Seymour Cohen filed a petition for the redetermination of a deficiency issued September 25, 1967, in the amount of \$1,925.32 plus interest of \$385.10 and a penalty for failure to file returns of \$481.31 for a total of \$2,791.73 in unincorporated business taxes under Article 23 of the Tax Law for the years 1961 through 1965.

A hearing was duly held on June 4, 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 Julius Krumholz, Esq. 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 a multi-line salesman is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner has been a sales representative for many years usually representing more than one principal. His lines are in women's wear concentrating on wedding attire.

2. For about 20 years, petitioner has represented Coquette Frocks of 1385 Broadway, New York City. In each year, he received

from 40% to 60% of his commissions from Coquette Frocks. Coquette Frocks withholds no taxes nor provides other employee benefits to petitioner. Petitioner claims they once did withhold but changed their policy "for convenience". Petitioner receives a 7% commission from Coquette Frocks which he claims is computed at 4% for sales and 3% to cover travel expenses.

3. In each year under review, petitioner represented from two to four principals other than Coquette Frocks. These were all located in New York City. Each paid him straight commissions from 7% to 10% and in one case of 20%, but on new orders only. None of these reimbursed petitioner for expenses. None of them withheld taxes or social security from his remuneration.

4. The territory of petitioner was the Midwest from Pittsburgh to Minneapolis. He was on the road about half of the time. Petitioner claims that when not on the road, he would work at the offices of Coquette Frocks helping to ship orders and doing other work.

5. Petitioner paid his own Federal self-employment tax.

CONCLUSIONS OF LAW

A. The petitioner is an independent contractor and is subject to tax. Petitioner's testimony as to inside work for Coquette Frocks and reimbursement of expenses by them is greatly outweighed by the fact that they do not withhold taxes or grant him the usual employee benefits. The fact that this is "for convenience" is irrelevant. He is an independent contractor with respect to each of his principals.

B. The penalties will be cancelled for 1961, 1962 and 1965, but are found to be appropriate with respect to 1963 and 1964. Petitioner's relationship with Coquette Frocks is ambiguous enough

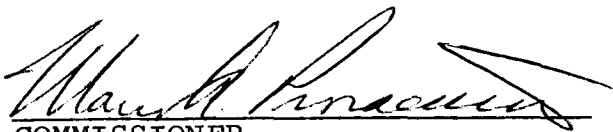
so that he may have legitimately thought he was an employee with respect to that one principal. If that had been true, petitioner's income for purposes of this tax would have included only the income from his other principals and such income was too low in 1961, 1962 and 1965 to require the filing of a return. In 1963 and 1964, however, such income was large enough and a penalty for not filing a return is appropriate.

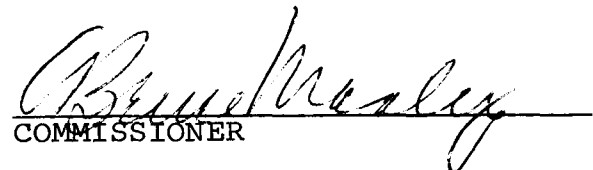
DECISION

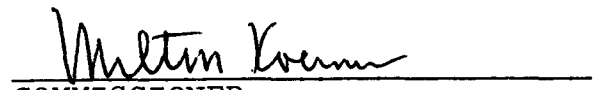
The deficiency, but including a penalty only to the extent of \$228.64, is found to be correct and is due together with such further interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York
March 6, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER