

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
WILLIAM I. LAMPEL

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) 1966 and 1967.

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 10th day of January, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon William I.

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

Mr. William I. Lampel
85-20 Eton Street
Jamaica, 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

10th day of January, 1974

Martha Funaro

[Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

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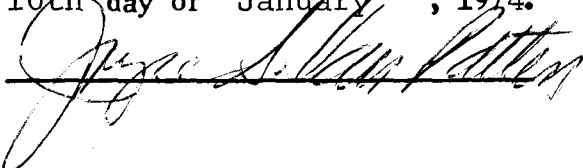
Martha Funaro, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 10th day of January, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Louis
Leichman, C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Louis Leichman, C.P.A.
29-30 172nd Street
Flushing, 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

10th day of January, 1974.







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
Mario A. Procaccino,
~~XXXXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
January 10, 1974

Mr. William I. Lampel
85-20 Eton Street
Jamaica, New York

Dear Mr. Lampel:

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	:	
WILLIAM I. LAMPEL	:	
	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1966 and 1967.	:	
	:	

William I. Lampel filed a petition for a redetermination of a deficiency notice issued under date of October 27, 1969, for unincorporated business taxes under Article 23 of the Tax Law for the years 1966 and 1967 in the amount of \$1,840.76 plus interest of \$226.74 and penalties under section 685(a) of the Tax Law of \$460.20 for a total of \$2,527.70.

A hearing was duly held before Nigel G. Wright, Hearing Officer, on December 6, 1972, at the offices of the State Tax Commission, 80 Centre Street, New York City. Louis Leichman, 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 the petitioner, a sales representative for one principal, is an independent contractor and so liable for the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner is a sales representative for Art Steel

Company, Inc. of 170 West 233rd Street, New York City, a manufacturer of "Steelmaster" office equipment. He has been with Art Steel Company, Inc. in varying capacities since 1925. He receives no paid vacation. He sells for no one else and has no other income.

2. Petitioner covers a territory of New York City, northern New Jersey and Philadelphia. In New York City he covers commercial stationery stores. Elsewhere he covers office furniture dealers also. Many of his accounts are old accounts of the company. As the business of the company has expanded petitioner's accounts have been assigned to new salesmen.

He works out the desk space furnished to all its salesmen by Art Steel Company, Inc.

3. Neither taxes nor social security are withheld from petitioner's compensation. It has not been shown that petitioner is covered by unemployment insurance or workmen's compensation. He is not covered by a pension plan. He is covered by a medical insurance plan and a group life insurance program of Art Steel Company, Inc.

4. Petitioner is not reimbursed for his traveling expenses.

5. Petitioner filed no returns for unincorporated business taxes. He had been advised by his accountant not to do so.

CONCLUSIONS OF LAW

The petitioner has not carried the burden of proof that his principal has a right to control his activities. The failure of his principal to withhold and the lack of coverage under unemployment insurance and workmen's compensation are particularly

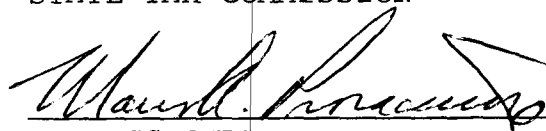
important. The petitioner is therefore subject to tax. However because petitioner relied on the advice of his accountant in not filing returns the penalty will be waived.

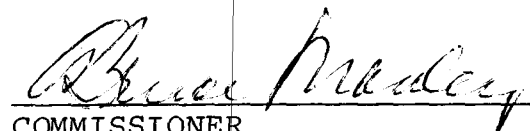
DECISION

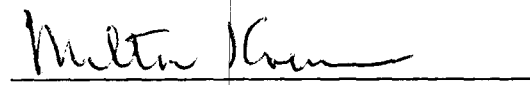
The deficiency is found to be correct except for the penalty stated therein which is waived and such deficiency is due together with such further interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York
January 10, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER