

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

M. LEON LEVY and MARY ANNE LEVY

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) 1967, 1968 & :
1969

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 22nd day of July , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon M. Leon Levy &
Mary Anne Levy (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. M. Leon Levy
43 Glenbrook Road
Monsey, New York 10952

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

22nd day of July , 1974.

Janet Mack

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York

July 22, 1974

Mr. & Mrs. M. Leon Levy
43 Glenbrook Road
Monsey, New York 10952

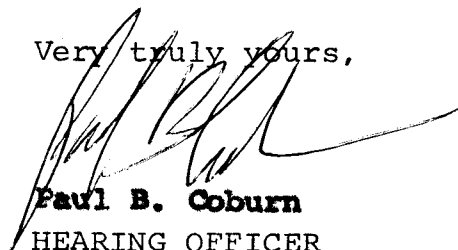
Dear Mr. & Mrs. Levy:

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,



Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
M. LEON LEVY and MARY ANNE LEVY	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967, 1968 and 1969.	:	
	:	

Petitioners, M. Leon Levy and Mary Anne Levy, have filed a petition for a redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1967, 1968 and 1969. (File No. 9-35000317).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on February 1, 1974, at 10:00 A.M. Petitioners appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUE

Did the activities of petitioner, M. Leon Levy, as a sales representative for Vulcraft, a steel fabricator company, during the years 1967, 1968 and 1969 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, M. Leon Levy and Mary Anne Levy, filed New York State income tax resident returns for the years 1967, 1968 and 1969. They did not file New York State unincorporated business tax returns for said years.

2. On June 26, 1962, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, M. Leon Levy and Mary Anne Levy, imposing unincorporated business tax upon the income received by them from the activities of petitioner, M. Leon Levy, as a sales representative during the years 1967, 1968 and 1969. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$4,936.64.

3. During the years 1967, 1968 and 1969, petitioner, M. Leon Levy, was a sales representative for Vulcraft, Division of Nuclear Corporation of America, a steel fabricator company. He sold steel joists and joist girders for use in nonresidential construction. The company plant was located in South Carolina. Petitioner worked in the New York - New Jersey area.

4. As a sales representative, petitioner, M. Leon Levy, had no written contract with Vulcraft. He talked to a representative of the company every day, usually in the morning, to send in orders and get them approved. He actually met with someone from the company about three or four times a year at sales meetings. The company did not exercise any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales except to limit the territory in which he could sell. Petitioner prepared reports at home, which his wife usually typed. At peak periods he hired assistants whom he paid on an hourly basis. He also had an answering service for his New Jersey accounts.

5. During the years 1967, 1968 and 1969, Vulcraft did not withhold Federal or New York State income taxes or social security from the earnings of petitioner, M. Leon Levy. The company did not provide any unemployment coverage for petitioner. It did arrange group insurance for petitioner and others in his position, but the premium was paid by the individual. The company had a pension plan for the people whom they had on their payroll as employees. It did not have such a plan for salesmen on the outside, such as petitioner. In fact, for the years in question, petitioner contributed to a self-employment retirement plan. Petitioner was not reimbursed for any of his expenses which he deducted on Schedule "C" of his Federal income tax returns for the years in question.

6. Petitioner, Mary Anne Levy, was in no way involved in the activities of her husband, M. Leon Levy, as a sales representative during the years 1967, 1968 and 1969.

CONCLUSIONS OF LAW

A. That the income received by petitioner, M. Leon Levy, from the company which petitioner, M. Leon Levy, represented during the years 1967, 1968 and 1969 constituted income from his regular business of selling steel joists and joist girders and not income as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.


B. That the aforesaid activities of petitioner, M. Leon Levy, during the years 1967, 1968 and 1969, constituted the carrying on of an unincorporated business, and the income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

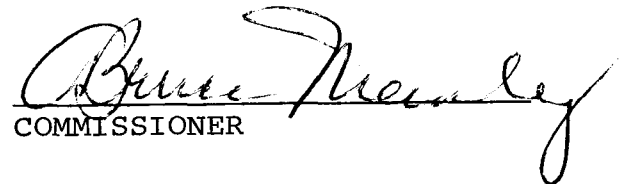
C. That the petition of M. Leon Levy and Mary Anne Levy is denied with respect to M. Leon Levy, and the Notice of Deficiency issued June 26, 1972 is sustained as against M. Leon Levy but cancelled as against Mary Anne Levy.

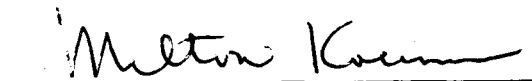
DATED: Albany, New York

July 22, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER