

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY MORGAN

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 ~~(ss)~~ 23 of the
Tax Law for the Year(s) 1969 and 1970.:

State of New York
County of Albany

JANET MACK

, 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 29th day of January, 1975, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon SIDNEY MORGAN

~~(representative of)~~ the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Mr. Sidney Morgan
75-39 180th Street
Flushing, New York 11366

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)~~
~~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

29th day of January, 1975.

Latherine B. M. M. M.

Janet Mack



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
January 29, 1973

Mr. Sidney Morgan
75-39 180th Street
Flushing, New York 11366

Dear Mr. Morgan:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section ~~73~~ 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 R. Coburn

HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Petitioner's Representative
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SIDNEY MORGAN	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1969 and 1970.	:	

Petitioner, Sidney Morgan, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1969 and 1970. (File No. 0-54364610). A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 2 World Trade Center, New York, on October 23, 1974, at 10:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Solomon Sies, Esq. of counsel).

ISSUE

Did petitioner, Sidney Morgan's selling activities during the years 1969 and 1970 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Sidney Morgan, and his wife filed New York State income tax resident returns for the years 1969 and 1970.

He did not file New York State unincorporated business tax returns for said years.

2. On July 31, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Sidney Morgan, imposing unincorporated business tax in the total sum of \$1,217.86 upon the income received by him from his activities as a salesman during the years 1969 and 1970. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,344.93.

3. During the years 1969 and 1970, petitioner, Sidney Morgan was a men's sportswear salesman. He represented two unaffiliated firms, Schott Bros. Inc. and Michelangelo Knitwear Corp., in the sale of said items. The products sold by him for each firm were noncompetitive. He did not have any employees. He also sold insurance, using his home as an office, during said years.

4. Petitioner, Sidney Morgan, received \$8,144.81 in commissions from Michelangelo Knitwear Corp. and \$14,781.77 in commissions from Schott Bros., Inc. during the year 1969. He received \$26,586.15 in commissions from said firms during the year 1970. Michelangelo Knitwear Corp. did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him, nor did it cover him for workmen's compensation or unemployment insurance. Schott Bros., Inc. withheld Federal and

New York State income taxes and social security tax from \$6,625.00 of the commission income paid to him during the year 1969 and from \$7,775.00 of said income during the year 1970, and it also covered him for workmen's compensation and unemployment insurance. He was not reimbursed by either firm for his business expenses which amounted to \$4,382.97 in the year 1969 and \$4,977.38 in the year 1970. He was required to purchase his samples from said firms. The firms for whom he sold men's sportswear did not exercise any substantial supervision and control over his sales activities and techniques and over the time that he devoted to sales, except to limit the territory in which he could sell. He also earned commissions of \$222.08 in 1969 and \$235.73 in 1970 from the sale of insurance.

CONCLUSIONS OF LAW

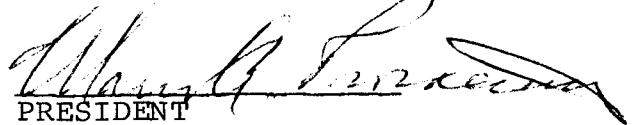
A. That the income received by petitioner, Sidney Morgan, from the firms that he represented during the years 1969 and 1970 constituted income from his regular business of selling men's sportswear and from insurance was not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Sidney Morgan, during the years 1969 and 1970 constituted the carrying on of an unincorporated business and his 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 Sidney Morgan is denied and the Notice of Deficiency issued July 31, 1972, is sustained.

DATED: Albany, New York
January 29, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER