

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK SHWEKY

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) 1965, 1966, 1967
and 1968.

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 30th day of January, 1975, she served the within
Notice of Decision ~~for the year(s) 1965, 1966, 1967 and 1968~~ by (certified) mail upon Jack Shweky

~~xxxxxxx~~ (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Jack Shweky
1091 E. 22nd Street
Brooklyn, 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

30th day of January, 1975

Katherine D. Mauley

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK SHWEKY

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 (39) 23 of the
Tax Law for the Year(s) 1965, 1966, 1967
and 1968.

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 30th day of January , 1975 , she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Edwin Shor, 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: Edwin Shor, C.P.A.

26 Court Street
Brooklyn, 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

30th day of January , 1975

Batherni D. Mauley

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

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

DATED: Albany, New York
January 30, 1973

Mr. Jack Shweky
1091 E. 22nd Street
Brooklyn, New York

Dear Mr. Shweky:

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

Please take further notice that pursuant to
Section (a) **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

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACK SHWEKY	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1965, 1966, 1967 and	:	
1968.	:	

Petitioner, Jack Shweky, 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 1965, 1966, 1967 and 1968. (File No. 8-24508796). 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, New York, on November 22, 1974, at 9:25 A.M. Petitioner appeared by Edwin Shor, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Did petitioner, Jack Shweky's selling activities during the years 1965, 1966, 1967 and 1968, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Jack Shweky, and his wife filed New York State income tax resident returns for the years 1965, 1966, 1967 and 1968. He did not file New York State unincorporated business tax returns for said years.

2. On May 24, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Jack Shweky, imposing unincorporated business tax in the total sum of \$1,536.63, upon the income received by him from his activities as a salesman during the years 1965, 1966, 1967 and 1968. It also imposed a penalty pursuant to section 685(a) of the Tax Law in the total sum of \$384.16 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,242.93.

3. During the years 1965, 1966, 1967 and 1968, petitioner, Jack Shweky, was a ladies' accessories salesman. He sold ladies' handkerchiefs and scarves produced by Berkshire Handkerchief Company, Inc. and ladies' gloves, scarves and blouses produced by Regent International Corporation.

4. Petitioner, Jack Shweky, owned one-third of the stock of Regent International Corporation. One-third of the stock was owned by Richard Mishaan and one-third of the stock was owned by Berkshire Handkerchief Company, Inc. He did not derive any income from Regent International Corporation during the years 1965, 1966, 1967 and 1968.

5. During the years 1965, 1966, 1967 and 1968, Richard Mishaan paid petitioner, Jack Shweky, commissions based upon a percentage of the sales made by petitioner of the products of Berkshire Handkerchief Company, Inc. during said years. This represented a portion of the commission income received by Richard Mishaan from Berkshire Handkerchief Company, Inc. Richard Mishaan did not withhold Federal or state income taxes or social security tax from the commission income paid to petitioner, Jack Shweky. He was not covered for workmen's compensation insurance. He was not reimbursed for expenses incurred in connection with his sales activities. He deducted said expenses on Schedule "C" of his Federal income tax returns. Neither Berkshire Handkerchief Company, Inc. or Richard Mishaan exercised any substantial control or supervision over his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

CONCLUSIONS OF LAW

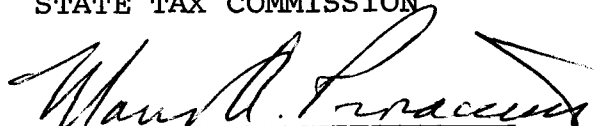
A. That the income received by petitioner, Jack Shweky, from Richard Mishaan during the years 1965, 1966, 1967 and 1968, constituted income from his regular business of selling ladies' handkerchiefs and scarves and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Jack Shweky, during the years 1965, 1966, 1967 and 1968, 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 Jack Shweky is denied and the Notice of Deficiency issued May 24, 1971, is sustained.

DATED: Albany, New York
January 30, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER