

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE SOUTHWORTH

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) 1965, 1966 :
and 1967.

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 4th day of December, 1975, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. George Southworth
5 Jefferson Avenue
Woodlawn Park
Rensselaer, 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)~~
~~(or)~~ 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

4th day of December, 1975.

Mary Trofy

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE SOUTHWORTH

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) 1965, 1966 :
and 1967.

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 4th day of December, 1975, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon
Stanley Eisenberg, PA (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Stanley Eisenberg, P.A.
Suite 26
105 Wolf Road
Albany, New York 12205
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

4th day of December, 1975.

May Hoff

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

BUILDING 9, ROOM 107
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

STATE TAX COMMISSION
HEARING UNIT

PAUL GREENBERG
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

MR. WRIGHT
MR. COBURN
MR. LEISNER
(518) ~~457-3850~~
457-3850

DATED: Albany, New York
December 4, 1975

**Mr. George Southworth
5 Jefferson Avenue
Woodlawn Park
Rensselaer, New York**

Dear Mr. Southworth:

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

Please take further notice that pursuant to
Section ~~722~~ **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,

L. Robert Leisner
L. Robert Leisner

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	:	
GEORGE SOUTHWORTH	:	DECISION
for a Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1965, 1966 and 1967.	:	

Petitioner, George Southworth, has filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 8-29187138). A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, Building 9, State Campus, Albany, New York, on June 13, 1974 at 1:30 P.M. Stanley Eisenberg, P.A. for the taxpayer.

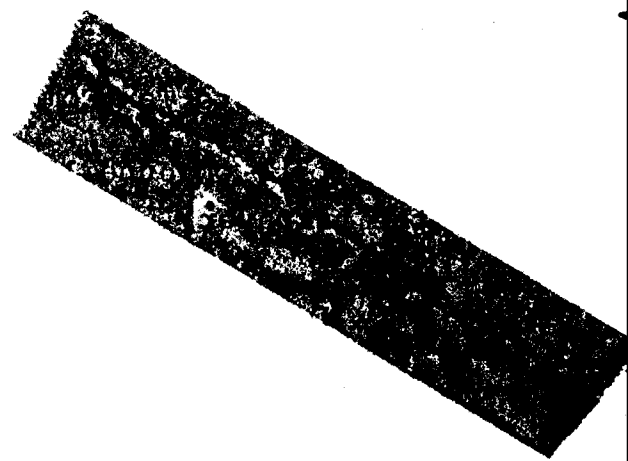
ISSUE

Did petitioner, George Southworth's activities as a salesman constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, George Southworth, filed New York State income tax resident returns and unincorporated business tax returns for the years 1965, 1966 and 1967. He filed a claim for refund of unincorporated business tax.

2. On November 30, 1970, the Income Tax Bureau disallowed petitioner's claim for refund on the grounds that his activities constituted the carrying on of an unincorporated business.



3. Petitioner, George Southworth, was a salesman for Dura-Bilt Corporation during the years in question. His duties were subject to full supervision, direction and control of Dura-Bilt, a home remodeling company. He worked only for Dura-Bilt and was paid by them every Friday.

4. Blue Cross and Blue Shield medical insurance premiums were deducted from petitioner's pay every month. He was covered by workmen's compensation in case of injury while working for Dura-Bilt. Dura-Bilt did not withhold any taxes from petitioner's commissions.

5. Petitioner's duties entailed soliciting orders from homeowners for Dura-Bilt remodeling projects. All contracts which he negotiated were performed through Dura-Bilt. The company provided petitioner with leads for possible orders.

6. Petitioner received advances against future commissions when he was ill and unable to work.

7. Petitioner had no personal business letterhead nor did he have his own business cards.

8. Petitioner was not reimbursed by Dura-Bilt for his traveling expenses. Dura-Bilt did not reimburse such expenses because the amount of commissions salesmen were to receive were intended to cover expenses as well as enabling them to receive earnings.

CONCLUSIONS OF LAW

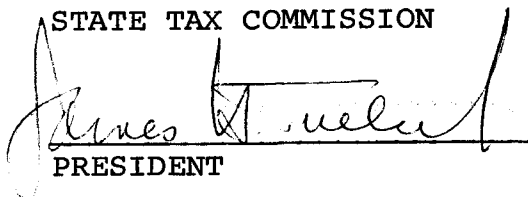
A. That petitioner, George Southworth's activities as a salesman did not constitute the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law.

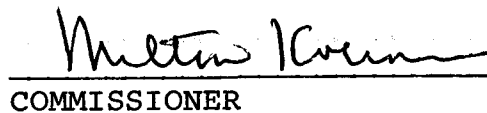
B. That the petition of George Southworth is sustained and the disallowance of claim for refund issued on November 30, 1970 is cancelled.

C. Pursuant to the Tax Law interest shall be added to the total amount due until paid.

DATED: Albany, New York
December 4, 1975

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER

COMMISSIONER