

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JERRY L. WOLFISH

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 ~~(x)~~ 23 of the
Tax Law for the Year(s) 1969, 1970 and :
1971.

State of New York
County of Albany

MARY GROFF, 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 JERRY L. WOLFISH

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

Mr. Jerry L. Wolfish
138 Jamaica Avenue
Tonawanda, New York 14150

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

4th day of December, 1975.

Janet Maed

Mary Groff



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. Jerry L. Wolfish
138 Jamaica Avenue
Tonawanda, New York 14150

Dear Mr. Wolfish:

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,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
Law Bureau

AD-1.12 (8/73)

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

:

of

:

JERRY L. WOLFISH

:

DECISION

for a Redetermination of a Deficiency or
for Refund of Unincorporated Business
Tax under Article 23 of the Tax Law for
the Years 1969, 1970 and 1971.

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Petitioner, Jerry L. Wolfish, 138 Jamaica Avenue, Tonawanda,
New York 14150, petitioned for a redetermination of deficiencies in
unincorporated business tax under Article 23 of the Tax Law for the
years 1969, 1970 and 1971.

A formal hearing was held at the offices of the State Tax
Commission, State Office Building, Buffalo, New York, on January 8,
1975, at 10:30 A.M., before L. Robert Leisner, Hearing Officer. The
taxpayer appeared pro se. The Income Tax Bureau was represented by
Saul Heckelman, Esq., (Norman M. Glass, Esq. of counsel).

ISSUE

Whether petitioner, Jerry L. Wolfish, was carrying on an
unincorporated business during the years 1969, 1970 and 1971?

FINDINGS OF FACT

1. Petitioner, Jerry L. Wolfish, timely filed New York State income tax returns for the years 1969, 1970 and 1971. He did not file New York State unincorporated business tax returns for the period in issue.

2. A Statement of Audit Changes in unincorporated business tax for the year 1969 was issued on January 31, 1972, against the taxpayer under File No. 44505437. On May 21, 1973, a Statement of Audit Changes for the years 1970 and 1971 in unincorporated business and personal income taxes was issued under File No. 76736632.

3. The taxpayer petitioned for a redetermination of the deficiencies.

4. The item in the May 21, 1973, Statement of Audit Changes dealing with expenses deducted from petitioner's personal income was settled at the formal hearing. Petitioner agreed to pay the additional tax in accordance with the adjustment.

5. Petitioner, Jerry L. Wolfish, during the years 1969, 1970 and 1971, was associated with B.F. Spencer Associates; Webster Company, Incorporated; Spencer Industries, Inc. and Webster Sportswear, Inc., as a manufacturer's representative. The companies are all subsidiaries of B.F. Spencer Industries, Inc. and are manufacturers of wearing apparel for men. In accordance with an agreement with the company,

petitioner was to show the B.F. Spencer Industries line exclusively during the selling season. He was responsible for weekly reports to the sales manager and attendance at sales meetings. B.F. Spencer Industries, Inc. paid petitioner on a commission basis and he paid his expenses out of the commissions. The corporation did not withhold taxes from these commissions and petitioner had no pension rights.

6. During the years in issue, petitioner was also associated with Cable Raincoats, Co. as a sales representative. He received a base salary of \$150 a week from them to be applied against any commissions that he would receive. Cable Raincoats, Co. did not reimburse petitioner's traveling expenses, withhold taxes or offer him a pension plan. He was allowed to sell other lines during his association with the company.

7. Petitioner was a sales representative for Rex Knitting Mills, Inc. during 1969 and 1970. He was paid by Rex on a commission basis and received no traveling expenses. Rex did not withhold any taxes from his commissions.

8. In 1971, petitioner, Jerry L. Wolfish, became associated with Target Mens Wear, Hyde Clothes, Ltd., a manufacturer of clothing and outer wear. He received commissions based on approved sales.

The company withheld social security taxes during the year 1971. He received no traveling expenses and no other taxes were withheld. Petitioner did not belong to the pension plan of Hyde Clothes, Ltd. during the period in issue but he did receive hospitalization and some medical benefits.

9. Petitioner, Jerry L. Wolfish, did not have an office. He had no employees. Most of his paperwork was done on the road or in his home. His contact with his principals was primarily by phone although he was periodically visited and supervised by sales managers of the various companies.

CONCLUSIONS OF LAW

A. That the activities of petitioner are those of an independent sales agent. Petitioner was not an employee of any of the aforementioned companies during the years 1969, 1970 and 1971.

B. That the activities of petitioner as an independent sales agent constituted the carrying on of an unincorporated business within the meaning and intent of section 703 of the Tax Law.

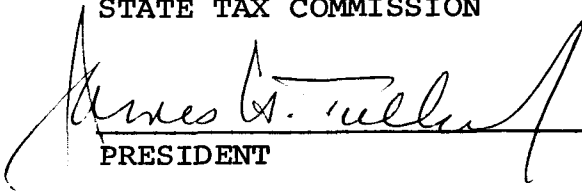
C. The petition is denied and the determination of the deficiency in income tax is sustained.

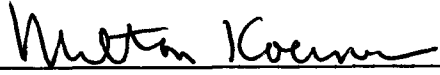
- 5 -

D. 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