

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD ALDRICH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~xxxxxx~~ 1961; :
1962 and 1963.

State of New York
County of Albany

Carmen Mottolese, 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 13th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Leonard Aldrich

~~xxxxxx~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Leonard Aldrich
155 West 68th Street
New York, New York 10023

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~representative~~
~~of the~~ 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

13th day of September, 1976.

Carmen Mottolese

Janet March

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LEONARD ALDRICH

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article(s) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1961, 1962 and 1963.

State of New York
County of Albany

Carmen Mottolese, 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 13th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Herman D. Schultz, Esq. (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Herman D. Schultz, Esq.
Susswein and Schultz, Esqs.
New York, N.Y. 10017

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative of the) 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

13th day of September, 1976.

Carmen Mottolese

Janet Mach



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS

ALBANY, N.Y. 12227
September 13, 1976

ADDRESS YOUR REPLY TO

457-3850

TELEPHONE: (518) _____

Mr. Leonard Aldrich
155 West 68th Street
New York, New York 10023

Dear Mr. Aldrich:

DECISION

Please take notice of the
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.

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. They
will be referred to the proper party for reply.

Very truly yours,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEONARD ALDRICH	:	DECISION
for the Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1961, 1962 and 1963.	:	

Petitioner, Leonard Aldrich, 155 West 68th Street, New York, New York 10023, 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 1961, 1962 and 1963. (File Number 3-7710063) A formal hearing was held before Nigel G. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1976, at 9:00 a.m. Petitioner appeared by Susswein & Schultz, Esqs. (Herman D. Shultz, Esq., of counsel). The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. and Richard Kaufman, Esq., of counsel).

ISSUES

I. Did the selling activities of the petitioner, Leonard Aldrich, during the years 1961, 1962 and 1963 constitute the carrying on of an unincorporated business?

II. Was New York State bound by an agreement or opinion of its examiner rendered at a conference?

III. Was New York State barred by the lapsing of the statute of limitations or laches from asserting its claim for unincorporated business tax for the years in issue?

IV. Was New York State barred from asserting its claim for unincorporated business tax by virtue of a determination in 1956 that the business activities of the petitioner, Leonard Aldrich, which were similar to those conducted by him during 1961, 1962 and 1963, were not subject to an unincorporated business tax?

FINDINGS OF FACT

1. Petitioner, Leonard Aldrich, filed New York State resident income tax returns for the years 1961, 1962 and 1963, but did not file New York State unincorporated business tax returns for said years.

2. On January 16, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Leonard Aldrich, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1961, 1962 and 1963. In accordance with the aforesaid Statement of Audit Changes, a Notice of Deficiency was issued in the sum of \$2,853.66, consisting of a deficiency of \$2,318.71 together with \$534.95 in interest.

3. During the years 1961, 1962 and 1963, petitioner, Leonard Aldrich, was a dress salesman. He represented three unaffiliated firms selling non-competitive lines of ladies dresses.

4. Petitioner, Leonard Aldrich's, primary principal during the years 1961, 1962 and 1963 was Ben Barrack Dresses, Inc., but he was permitted to simultaneously display and sell dresses for Robin and Wilson Folman, Inc. while on seasonal road trips for Ben Barrack Dresses, Inc. None of the firms for whom he sold withheld Federal and New York State income taxes, or social security tax from the commissions paid to him. He was not reimbursed for any of his business expenses. He deducted such business expenses on Schedule "C" of his Federal income tax return. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities or techniques, except that Ben Barrack Dresses, Inc. designated the times he was to take road trips. The road trips so designated, however, were more determined by when the seasonal line of dresses was ready for sale. The only restrictions placed upon petitioner's activities were confining his sales territory to a specific area, the requirement that when he was not on the road he must work out of Ben Barrack's showroom when needed, and that he was precluded from selling competitive products.

5. During the year 1956, the petitioner, Leonard Aldrich, was assessed by the Department of Taxation and Finance for unincorporated business tax for the years 1952, 1953 and 1954. When petitioner's activities were explained to the Income Tax Bureau, the assessment was cancelled in its entirety. The petitioner's business operation is the same today as it was in 1952, 1953 and 1954.

6. A conference was held before Harold B. Herzog, a tax examiner, on November 15, 1965 and a Report of Conference was issued on November 19, 1966, wherein the examiner rendered an opinion that Ben Barrack was the prime employer of the taxpayer.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Leonard Aldrich, from the firms he represented during the years 1961, 1962 and 1963 constituted income from his regular business of selling dresses and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with section 703(b) of the Tax Law.

B. That an examiner for the Department of Taxation and Finance lacks the absolute authority to compromise or settle claims for taxes, such authority being vested solely in the State Tax Commission. Therefore, any redetermination of tax due

entered into or negotiated by a tax examiner is subject to review by the State Tax Commission.

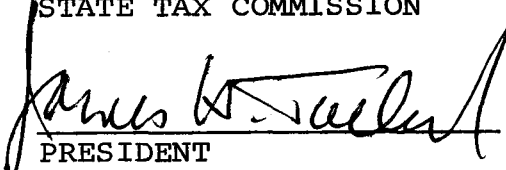
C. That since the petitioner, Leonard Aldrich, failed to file unincorporated business tax returns for the years 1961, 1962 and 1963, therefore a Statement of Audit Changes and a Notice of Deficiency for unincorporated business tax for said period could be issued at any time. The claim is not barred by either the statute of limitations or laches.

D. That each determination of the State Tax Commission as to the status of a taxpayer stands on its own, and is binding upon the State Tax Commission for only those taxable years to which it specifically relates, and to that state of facts upon which it was based.

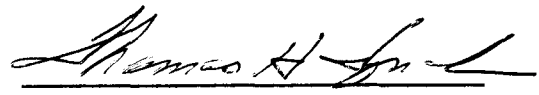
E. That the petition of Leonard Aldrich is denied and the Notice of Deficiency dated January 16, 1967, is sustained.

DATED: Albany, New York
September 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER