

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
LLOYD A. AND CORA SUE AMUNDSEN : DECISION  
for a Redetermination of a Deficiency or for :  
Refund of Unincorporated Business Taxes under :  
Article 23 of the Tax Law for the Years 1966, :  
1967 and 1968.

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Petitioners, Lloyd A. and Cora Sue Amundsen, 49 Belton Road, Babylon, New York 11702, have filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for 1966, 1967 and 1968. (File No. 24659055). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 11, 1976, at 9:15 A.M. Petitioner, Lloyd A. Amundsen, appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq., of counsel).

ISSUE

Was the income derived from the petitioner's activities as a sales representative during the years 1966, 1967 and 1968 subject to the unincorporated business tax?

FINDINGS OF FACT

1. Petitioners, Lloyd A. and Cora Sue Amundsen, filed joint New York State income tax resident returns for the years 1966, 1967 and 1968. The petitioners did not file New York State unincorporated business tax returns for said years.

2. On April 12, 1971, the Income Tax Bureau issued a revised Statement of Audit Changes against the petitioners, Lloyd A. and Cora Sue Amundsen, imposing business taxes in the sum of \$1,099.89 upon the income received from Lloyd A. Amundsen's activities as a sales representative. It also imposed a penalty pursuant to section 685(a) of the Tax Law in the sum of \$274.98 for failure to file unincorporated business tax returns for said years. In accordance with the Statement of Audit Changes, the Income Tax Bureau issued a Notice of Deficiency in the sum of \$1,588.18 for tax, penalty and interest due.

3. Petitioner, Lloyd Amundsen, was employed by Gommi Associates and Gommi-Thill Inc., as a sales representative during the years 1966, 1967 and 1968. Both businesses were owned by Mr. Albert Gommi and operate out of the same location. Both businesses conduct substantially the same type of business, specifically photographers of food displays.

4. Petitioner, Lloyd Amundsen, is provided with an office by his employers from which he conducts approximately 90% of his activities. These activities include; scheduling appointments for the photographers, booking the appropriate economists and stylists, obtaining props, and preparation of the billing. The remaining 10% of the petitioner's activities included personal field contacts and entertainment of clients for which he bore the expense. With few exceptions, the clients to be serviced by Mr. Amundsen were provided by his employer. Ordinarily a client would initiate the transaction by contacting one of the employers. The decision as to which employer would do the photography was made by the client or the employers, not, Mr. Amundsen.

5. Petitioner, Lloyd Amundsen, is compensated strictly on a commission basis. His employers did not withhold any payroll taxes or pension program

payments. He maintained no written agreement with his employer but was prohibited from servicing accounts for other photographers. He needed the approval of his employer to take time off.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Lloyd A. Amundsen, from his activities as a sales representative during the years 1966, 1967 and 1968 constitutes compensation as an employee exempt from the imposition of unincorporated business tax in accordance with section 703(b) of the Tax Law.

Although he works for two separate entities, the ownership and physical location of these businesses are one. There is, therefore, no conflict concerning who has the right to control the petitioner's activities.

B. That the petition of Lloyd A. and Cora Sue Amundsen is granted and the Notice of Deficiency issued on February 5, 1971, is cancelled.

DATED: Albany, New York  
October 4, 1976

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