

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR COHEN

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) 1966 through :
1972.

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 3rd day of February, 1976, she served the within
Notice of Decision ~~(or Determination)~~ by (certified) mail upon SEYMOUR COHEN

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

Mr. Seymour Cohen
2106 82nd Street
Brooklyn, New York 11214

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)~~ petitioner.

Sworn to before me this

3rd day of February, 1976.

Janet Mack

Mary Groff

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR COHEN

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) 1966 through :
1972.

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 3rd day of February, 1976, she served the within
Notice of Decision (~~on Determination~~) by (certified) mail upon JULIUS KRUMHOLZ, ESQ.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Julius Krumholz, Esq.
1133 Broadway
New York, New York 10010

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

3rd day of February, 1976.

Janet Mack

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

DATED: Albany, New York
February 3, 1976

Mr. Seymour Cohan
2106 82nd Street
Brooklyn, New York 11214

Dear Mr. Cohan:

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

Please take further notice that pursuant to
Section (8) **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 GREENBERG
~~MANAGING SECRETARY~~
ACTING DIRECTOR
TAX APPEALS BUREAU

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SEYMOUR COHEN	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1966 through 1972.	:	

Petitioner, Seymour Cohen, 2106 82nd Street, Brooklyn, New York 11214, filed petitions for the redetermination of deficiencies issued on December 23, 1974, for the years 1966 through 1972. (File Nos. 8-15008291 and 2-26017645).

The petitioner waived in writing a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

The issue in this case is whether a multi-line salesman is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Seymour Cohen, has been a sales representative for many years usually representing more than one principal. His lines are in women's wear concentrating on wedding attire.

2. On December 23, 1974, two statements of audit changes were issued against the petitioner involving the years 1966 through 1968 and 1969 through 1972. Deficiencies in tax due were asserted on the basis of a decision rendered by the New York State Tax Commission dated March 6, 1974, against the petitioner involving income derived from his activities as a salesman during the years 1961 through 1965. Such income was held subject to the New York State unincorporated business tax. Notices of deficiency were issued in the amounts of \$2,778.36 for the years 1966 through 1968 and \$5,387.09 for the years 1969 through 1972.

3. The underlying facts upon which the New York State Tax Commission decision dated March 6, 1974, was based are essentially the same for the case at hand.

4. For about twenty years including the years in question, the petitioner has represented Coquette Frocks of 1385 Broadway, New York City. In each year, he received from 40% to 60% of his commissions from Coquette Frocks. Coquette Frocks withheld no

taxes nor provided other employee benefits to petitioner. Petitioner claims they once did withhold but changed their policy "for convenience." Petitioner received a 7% from Coquette Frocks which he claims was computed at 4% for sales and 3% to cover travel expenses.

5. In each year under review, petitioner represented from two to four principals other than Coquette Frocks. These were all located in New York City. Each paid him straight commission from 7% to 10% and in one case of 20%, but on new orders only. None of them reimbursed petitioner for expenses. None of them withheld taxes or social security from his remuneration.

6. The territory of petitioner was the Midwest, from Pittsburgh to Minneapolis. He was on the road about half of the time. Petitioner claims that when not on the road, he would work at the offices of Coquette Frocks helping to ship orders and doing other work.

7. Petitioner paid his own Federal self-employment tax.

CONCLUSIONS OF LAW

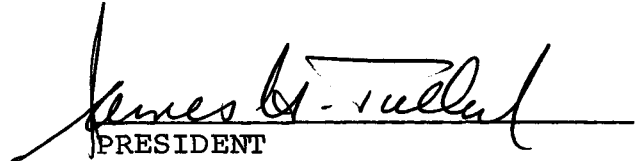
A. That the petitioner, Seymour Cohen, is an independent contractor and is subject to tax. Petitioner's testimony as to inside work for Coquette Frocks and reimbursement of expenses by them is greatly outweighed by the fact that they do not withhold taxes or grant him the usual employee benefits. The fact that

this is "for convenience" is irrelevant. He is an independent contractor with respect to each of his principals.

B. That the deficiencies are correct and are due together with such further interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York
February 3, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER