

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SOL HILLER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(8)~~ 23 of the :
Tax Law for the Year(s) ~~xxx~~ ~~Period(s)~~ :
1964 through 1973.

State of New York
County of Albany

Catherine Steele, 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 10th day of September, 1976, she served the within Notice of Decision by (certified) mail upon Sol Hiller ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Sol Hiller
621 Avenue K
Brooklyn, New York 11230
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)~~ ~~of the~~ petitioner herein and that the address set forth on said wrapper is the last known address of the ~~(representative of)~~ ~~of the~~ petitioner.

Sworn to before me this

10th day of September, 1976

Catherine Steele

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SOL HILLER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~(ss)~~ 23 of the :
Tax Law for the Year(s) ~~xxx Period(s)~~ :
1964 through 1973.

State of New York
County of Albany

Catherine Steele, 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 10th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Jules M. Fields, Esq.

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Jules M. Fields, Esq.
Northcourt Building
White Plains, New York 10601

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

10th day of September, 1976

Catherine Steele

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

September 10, 1976

TELEPHONE: (518) **457-3850**

Mr. Sol Miller
621 Avenue K
Brooklyn, New York 11230

Dear Mr. Miller:

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

Please take further notice that pursuant to
Section ~~720~~ **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	:	
SOL HILLER	:	DECISION
for Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1964 through 1973.	:	
	:	

Petitioner, Sol Hiller, of 621 Avenue K, Brooklyn, New York, 11230, filed a petition under Section 689 of the Tax Law for redetermination of deficiencies in unincorporated business tax under Article 23 of the Tax Law for the years 1964 through 1973. (File No. 00534)

The deficiency for 1964 through 1966 was asserted by a notice issued July 28, 1969, and is in the amount of \$3,158.72, plus interest of \$637.62 and a penalty of \$764.37 for a total of \$4,560.71. A separate deficiency was asserted for the years 1967 through 1973 by a notice issued February 24, 1975, and is in the amount of \$13,315.38, plus interest of \$2,625.53 for a total of \$15,940.91.

A hearing was duly held on November 21, 1975, at 10:00 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner appeared by Jules M. Fields, Esq.

(2)

The Income Tax Bureau appeared by Peter Crotty, Esq.,
(Alexander Weiss, Esq. of Counsel).

The record of said hearing has been duly examined and
considered.

ISSUE

Whether or not petitioner, a salesman, is subject to
unincorporated business taxes is the issue in this case.

FINDINGS OF FACT

1. Petitioner is a manufacturers representative for
Pat Fashions Industries, Inc., of 1370 Broadway, New York,
New York, and its three subsidiaries, Pat Fashions Inc.,
Patti Sportswear Inc., and Starlight Trading, Inc. These
three companies manufacture or sell blouses, pants and pant-
suits, and knitted pants, respectively.

2. In 1964, 1965 and 1966, petitioner also received
commissions from Chic Togs, Fashions, Inc., a manufacturer
of skirts and pants, and from Sports Queens Fashions, Inc.
These amounted to between \$6,000.00 and \$25,000.00 a year.

3. Petitioner worked for three subsidiaries of Pat
Industries under written agreements. An agreement dated
July 1, 1963, provided that petitioner could carry other
lines. This was referred to as an "employment agreement".
The agreement is not, however, in evidence. A later agree-
ment dated July 1, 1966, provided that petitioner must work

(3)

exclusively for Pat Industries. Petitioner received a guaranteed draw against his commission income which was itself guaranteed at \$57,000.00 for the first year. For the second year, petitioner would have the right to sell other products if his commission income did not exceed \$42,000.00 and his status would be governed by the 1963 agreement. Petitioner was made a member of the company profit sharing plan. The contract provided that if petitioner was unable to perform his duties for six month, then the company could terminate the agreement.

4. Petitioner covered a territory of the states of Virginia, North Carolina, South Carolina, Georgia, and Florida. He traveled about 40 weeks every year. In each city it is his general procedure to take space in a trade building or hotel and to show his goods there to buyers to whom he has sent announcements.

5. Petitioner incurred expenses in his work amounting to about one-third of his commissions. He was not reimbursed. These expenses included substantial amounts for auto leasing, or travel, the cost of trade shows and models. For 1965, the expenses included commissions of \$3,000.00.

6. In 1964 and 1965 there was no withholding of taxes on social security from petitioner's compensation. Beginning July 1, 1966, both taxes and social security have been withheld.

(4)

7. Petitioner was advised by an accountant in the preparation of his tax returns.

CONCLUSIONS OF LAW

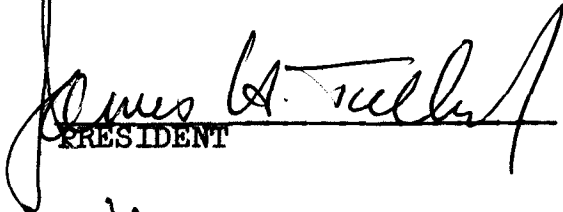
A. That since July 1, 1966, petitioner has been an employee and is not subject to Unincorporated Business Tax but prior to that date the petitioner's principals did not have the legal right to control his activities with the result that petitioner was an independent contractor and is subject to tax.

B. That the penalties are waived.

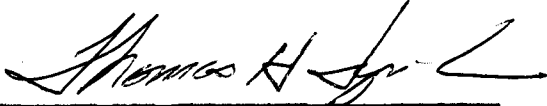
C. That because of the above reasons, the deficiency for 1967 through 1973 is erroneous and is cancelled and the deficiency for 1964 through 1966 (including \$101.25 for personal income tax in 1965) is redetermined to be \$2,916.91 plus such interest as may be lawfully due.

DATED: ALBANY, NEW YORK
September 10, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER