

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LARRY SHEDLIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article(x) 23 of the :  
Tax Law for the Year(s) ~~1968, 1969 and 1970~~ :  
1968, 1969 and 1970.

State of New York  
County of Albany

Donna Scranton, 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 August, 1976, she served the within  
Notice of Decision by (certified) mail upon Larry  
Shedlin (~~representative of~~) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Mr. Larry Shedlin  
10 Wilson Court  
Spring Valley, New York 10977

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)~~  
~~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

4th day of August, 1976.

Donna Scranton

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
LARRY SHEDLIN

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Unincorporated Business :  
Taxes under Article (x) 23 of the :  
Tax Law for the Year(s) ~~or 23100(x)~~ :  
1968, 1969 and 1970.

State of New York  
County of Albany

Donna Scranton, 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 August, 1976, she served the within Notice of Decision by (certified) mail upon Bertrand Leopold (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Bertrand Leopold  
18 Joseph Street  
New Hyde Park, New York 11040

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

4th day of August, 1976.

Donna Scranton

Janet Mark



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 4, 1976

TELEPHONE: (518) **457-3830**

Mr. Larry Shedlin  
10 Wilson Court  
Spring Valley, New York 10977

Dear Mr. Shedlin:

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.

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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
LARRY SHEDLIN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968, 1969 and 1970.	:	

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Larry Shedlin, 10 Wilson Court, Spring Valley, New York 10977, filed a petition under sections 720 and 689 of the Tax Law for redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the years 1968, 1969 and 1970. (File No. 0-68038221.)

Said deficiency was asserted by notice issued January 29, 1973, and is in the amount of \$1,974.50 plus interest of \$306.16 and penalties for failure to file returns and failure to pay estimated tax amounting to \$753.83 for a total of \$3,034.49.

A hearing was duly held on December 11, 1975, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Bertrand Leopold. The Income Tax Bureau was

represented by Peter Crotty, Jr., Esq., appearing by Michael Alexander, Esq., of counsel.

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

#### ISSUE

The issue in this case is whether petitioner is an independent contractor subject to unincorporated business tax.

#### FINDINGS OF FACT

1. Petitioner was a manufacturer's representative. During 1968, 1969 and 1970 he represented three companies under common management: Bow Wow Ltd., T.K. International Inc. and Ruff Stuff Ltd. Together they sold ladies shirts, ladies sweaters and ladies pants. He had started with these three companies in July, 1968 and stayed with them until 1970 or 1971 when apparently the companies went out of business. Petitioner did not apply for nor receive unemployment insurance. He was on a commission basis, but received a \$300.00 weekly draw against commissions. He would usually receive this from just one company each week though the identity of the company varied from week to week.

2. Petitioner also represented two other companies, Pandora Knitwear, Inc. and Heraldcorp Corp. but received only small amounts of commissions from these companies.

3. No amounts were withheld from petitioner's compensation for taxes or social security. He was not covered for unemployment insurance and apparently not for workmen's compensation. Though petitioner admitted that withholding was discussed at the time he started with these companies, he also admits that he agreed to the arrangement where there would be no withholding.

4. Petitioner had a territory consisting of the metropolitan New York area including Long Island and northern New Jersey. He generally traveled at least three days a week. Petitioner incurred expenses relating to his sales for which he was not reimbursed. These amounted to about one-third of his commissions and were primarily auto and travel expenses. Petitioner paid for the samples he received from his companies.

5. Petitioner would work one day a week in the New York showroom of his principals. He received no commission on sales made there unless the customer was in his own territory. He did receive commissions on sales made by the company's Florida salesmen to customers from his own territory.

6. Petitioner's testimony as to his duties cannot be and is not accepted at face value. His statements were often prompted by leading questions. They are incomplete as to details and apparent conflicts are not explained.

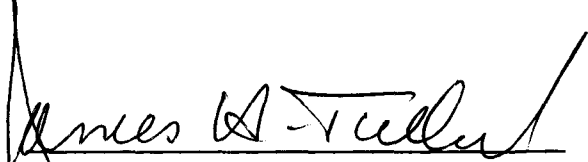
CONCLUSIONS OF LAW

A. That petitioner has not carried the burden of proof that he was legally subject to the control of his principals as to the details of performing his duties. It is particularly important that petitioner worked under an arrangement where as he admits he received none of the usual benefits of the employee status.

B. That the deficiency under review is correct and is found due together with such interest as shall be computed under section 684 of the Tax Law.

DATED: Albany, New York  
August 4, 1976

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER