

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT WENDORF

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~~ ~~XXXXXX~~ :
1968, 1969 and 1970.

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 13th day of September, 1976, she served the within
Notice of Decision by (certified) mail upon Robert Wendorf

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Robert Wendorf
19 Chesterfield Road
Scarsdale, New York 10583

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)~~ petitioner.

Sworn to before me this

13th day of September, 1976

Catherine Steele

Janet Mack



ADDRESS YOUR REPLY TO

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

TA-1.12 (1/76)

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Robert Wendorf, has filed a petition for redetermination of a deficiency or for a refund of unincorporated business taxes under Article 23 of the Tax Law for years 1968, 1969 and 1970 (File No. 0-64184306). A formal hearing was held before Sidney Burstein, Esq., Hearing Officer, at the Offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 17, 1976 at 3:40 P.M. Petitioner was not represented and appeared in person. The Income Tax Bureau appeared by Peter Crotty, Esq. (James Scott, Esq., of Counsel).

ISSUE

Was the income derived from petitioner Robert Wendorf's activities as a salesman subject to the unincorporated business tax under Article 23 of the New York State Tax Law?

FINDINGS OF FACT

1. Petitioner, Robert Wendorf, was employed as a salesman on a commission basis for a number of companies engaged in the manufacture and selling of shoes during the years 1968, 1969 and 1970.

2. All billing was performed by the companies petitioner, Robert Wendorf represented and payment by the customers was made directly to the company.

3. Petitioner, Robert Wendorf, did not employ or pay any assistants nor did he maintain an office within or without New York State.

4. Withholding taxes and Social Security contributions were not deducted from petitioner, Robert Wendorf's commissions. He was not covered for unemployment insurance.

5. Petitioner, Robert Wendorf, had a specified territory. However, the firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales.

6. Petitioner, Robert Wendorf, as shown on Schedule "C" of his Federal Tax Return, deducted from his gross income traveling expenses, depreciation on a car, rent on business property (a room in his home), postage, legal and accounting fees, entertainment, fares, samples and sample cases.

7. Petitioner, Robert Wendorf, relied on statements made in connection with his petition for refund of unincorporated business taxes for the years 1959, 1960 and 1961 that he was not subject to the unincorporated business tax. He also relied upon the advice of his accountant.

CONCLUSIONS OF LAW

A. That the activities of the petitioner, Robert Wendorf, as a commission salesman during the years 1968, 1969 and 1970 constituted the carrying on of an unincorporated business and the resulting income therefrom were subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

B. That petitioner, Robert Wendorf's activities during the years in issue did not constitute the practice of a profession in accordance with the meaning and intent of section 703(c) of the Tax Law.

C. That the petition of Robert Wendorf is denied and the Notice of Deficiency issued November 26, 1973 in the amount of \$3833.92 is sustained together with such interest as may be due from November 26, 1973.

DATED: Albany, N.Y.
September 13, 1976

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER