

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
MURRAY AUGENBAUM

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) ~~xxx xxxxx~~ :
1967, 1968, 1969, 1970 and 1971.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
xhe is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 7th day of March , 1977, xshe served the within
Notice of Decision by (certified) mail upon Murray Augenbaum

(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Murray Augenbaum
136-87 71st Road
Kew Gardens Hills, New York 11367

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~~
~~xxxxxx~~) 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

7th day of March , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

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MURRAY AUGENBAUM

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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) ~~1967, 1968, 1969, 1970 and 1971.~~ :
1967, 1968, 1969, 1970 and 1971.

State of New York
County of Albany

Bruce Batchelor, 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 7th day of March, 1977, she served the within
Notice of Decision by (certified) mail upon Sidney T. Lippel, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sidney T. Lippel, CPA
250 West 57th Street
New York, NY 10019

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

7th day of March, 1977

Bruce Batchelor

Janet Mack



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

March 7, 1977

TELEPHONE: (518) **457-1723**

Mr. Murray Augenbaum
136-87 71st Road
Kew Gardens Hills, New York 11367

Dear Mr. Augenbaum:

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

Please take further notice that pursuant to
Section (a) **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,

Frank J. Puccia
Frank J. Puccia
Supervisor of
Small Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE TAX COMMISSION

In the Matter of the Petition :
of :
MURRAY AUGENBAUM :
for Redetermination of a Deficiency :
or for Refund of Unincorporated :
Business Taxes under Article 23 of :
the Tax Law for the Years 1967, 1968, :
1969, 1970 and 1971. :

A small claims hearing was held before Philip Mercurio, Small Claims Hearing Officer, on August 16, 1976 at 9:15 A.M. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Sidney T. Lippel. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

I. Whether the selling activities of the petitioner, Murray Augenbaum, during the years 1967, 1968, 1969, 1970 and 1971 constituted the carrying on of an unincorporated business.

II. Whether petitioner, Murray Augenbaum, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1970 and 1971.

FINDINGS OF FACT

1. Petitioner, Murray Augenbaum, and his wife filed New York State resident returns for the years 1967 through 1971. He did not file New York State unincorporated business tax returns for said years.

2. On April 6, 1971, August 31, 1972 and November 19, 1973, the Income Tax Bureau issued Statements of Audit Changes against the petitioner, Murray Augenbaum. The one issued on April 6, 1971 covered the years 1967, 1968 and 1969, the one issued August 31, 1972 covered the year 1970 and the one issued November 19, 1973 covered the year 1971, all imposing unincorporated business tax upon the income received by him for said years. The Statement of Audit Changes dated August 31, 1972, for the year 1970, also included an adjustment for business expenses disallowed, and imposed a penalty under section 685 of the Tax Law. The Statement of Audit Changes dated November 19, 1973, imposed penalties under sections 685(a)(1) and (a)(2). In accordance with the aforesaid Statements of Audit Changes, the Income Tax Bureau issued three notices of deficiency. One dated November 26, 1973 in the sum of \$2,956.73, another dated January 29, 1973 in the amount of \$1,418.40 plus penalties of \$354.60, and one dated November 24, 1975 in the sum of \$1,846.92.

3. Petitioner, Murray Augenbaum, was a salesman of lampshades, lampbases and inexpensive pictures during the years 1967 through 1971. He represented three or four firms during said years. The products sold by petitioner, Murray Augenbaum, for each firm were noncompetitive.

4. During the years 1967 through 1971 the firms for whom the petitioner, Murray Augenbaum, sold said items did not withhold Federal and New York State income taxes and social security tax from the commissions paid him. He was not reimbursed for any of his business expenses. He was free to work for other principals as long as they were noncompetitive. He did not have any written employment contracts. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities or techniques or over the time he devoted to sales except to limit the territory in which he could sell.

5. Petitioner, Murray Augenbaum, was not covered by any of the principals he represented during the years 1967 through 1971, under any employee-related plans, such as, pension plan, unemployment insurance, or compensation or disability benefits. He filed Federal "Self Employment" forms for said years and commencing in 1971 participated in a "Keogh Plan."

6. Petitioner, Murray Augenbaum, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1970 and 1971.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Murray Augenbaum, from the firms he represented during the years 1967 through 1971 constituted income from his regular business of selling and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Murray Augenbaum, during the years 1967 through 1971 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, Murray Augenbaum, had reasonable cause for failing to file New York State unincorporated business tax returns for the years 1970 and 1971; and therefore, the penalties assessed pursuant to section 685 of the Tax Law for the year 1970 and sections 685(a)(1) and 685(a)(2) of the Tax Law for the year 1971 are waived.

D. That the petitions of Murray Augenbaum, are granted to the extent of cancelling the penalties imposed in the sum of \$354.60 for 1970 and in the sum of \$494.67 for the year 1971; that the Income Tax Bureau is hereby directed to accordingly modify

the notices of deficiency issued January 29, 1973 and November 24, 1975; and, that except as so granted, the petitions are in all other respects denied.

E. That the petition of Murray Augenbaum is denied and the Notice of Deficiency issued November 26, 1973, is sustained.

DATED: Albany, New York
March 7, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER