

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ERWIN J. S. BENSDORF

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 Period(s)~~ :
1967, 1968, 1969, 1970 & 1971.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of March, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Erwin J. S. Bensdorf

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

Mr. Erwin J. S. Bensdorf
141-30 84th Road
Kew Gardens, New York

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)~~
~~XXXXX~~ 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

24th day of March, 1977.

Bruce Batchelor

Janet M. [Signature]

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ERWIN J. S. BENS DORF

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

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
he is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24th day of March , 1977, he served the within
Notice of Decision by (certified) mail upon Jeffrey Green, CPA

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Jeffrey Green, CPA
11 Harness Road
New City, New York 10956

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

24th day of March , 1977.

Bruce Batchelor

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

March 24, 1977

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

Mr. Ervin J. S. Bensdorf
141-30 84th Road
Kew Gardens, New York

Dear Mr. Bensdorf:

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

Please take further notice that pursuant to
Section(2) **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. Puccio
Frank J. Puccio
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
ERWIN J. S. BENS DORF : DECISION

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

Petitioner, Erwin J. S. Bensdorf, 141-30 84th Road,
Kew Gardens, New York, has filed petitions for redetermination
of deficiencies or for refunds of unincorporated business taxes
under Article 23 of the Tax Law for the years 1967, 1968, 1969,
1970 and 1971. (File Nos. 9-34382788, 0-56265857 and 1-75895040).

A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on October 29, 1976 at 10:45 A.M. Petitioner appeared with his accountant, Jeffrey Green, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Frank Levitt, Esq. of counsel).

ISSUE

Was the income derived from the petitioner, Erwin J. S. Bensdorf's activities as a sales representative during the years 1967 through 1971 subject to the unincorporated business tax imposed under Article 23 of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Erwin J. S. Bensdorf, filed New York State income tax resident returns for 1967 through 1971. He did not file unincorporated business tax returns for these years.

2. On April 10, 1972, the Income Tax Bureau issued a Notice of Deficiency against the petitioner, Erwin J. S. Bensdorf, for the tax years 1967, 1968 and 1969. A second Notice of Deficiency was issued on January 28, 1974 for the year 1971 and a third Notice of Deficiency was issued on March 25, 1974 for the year 1970. The three notices of deficiency imposed unincorporated business tax on income derived from petitioner's activities as a sales representative.

3. During the years at issue, petitioner, Erwin J. S. Bensdorf, was a traveling sales representative engaged in the selling of baby furniture. During the years 1967 and 1968 the petitioner represented and made sales for seven firms. In 1969 he began representing Frank F. Taylor Co., Inc. as well as four other principals and during this year derived approximately 60% of his income from Frank F. Taylor Co., Inc. In 1970 and 1971, petitioner represented Frank F. Taylor Co., Inc. and two other firms. He derived approximately 80% of his income from Frank F. Taylor Co., Inc. during 1970 and 1971.

4. Petitioner, Erwin J. S. Bensdorf, was assigned the Metropolitan New York and New Jersey areas. During the years

1969, 1970 and 1971 while he represented Frank F. Taylor Co., Inc., he contacted only their customers and subsequent to making sales for them, he would then sell noncompetitive items for the other firms he represented.

5. Petitioner, Erwin J. S. Bensdorf, arranged his own travel schedule; however, one of his principals would occasionally require that he call on a particular customer. His daily activities were not generally directed and he used his own discretion as to the division of time and sales techniques used regarding his various principals.

6. Petitioner, Erwin J. S. Bensdorf, received compensation for the sales he made on a commission basis. The principals he represented did not withhold any payroll taxes or pension plan payments. He was not reimbursed for expenses incurred in the course of conducting his sales activities.

7. Petitioner, Erwin J. S. Bensdorf, filed Federal schedules "C" of form 1040, for the years 1967 through 1971 and claimed thereon business deductions for office space maintained in his home. During the taxable year 1969, he claimed a salary expense deduction for an assistant.

8. Petitioner, Erwin J. S. Bensdorf, maintained his own self-employed retirement plan during the years at issue.

9. Petitioner, Erwin J. S. Bensdorf, was advised by his accountant that he was not subject to unincorporated business tax.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Erwin J. S. Bensdorf, during the years 1967, 1968, 1969, 1970 and 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.

B. That the petitioner, Erwin J. S. Bensdorf, had reasonable cause for not filing unincorporated business tax returns for the years 1967 through 1971 and, therefore, the penalties assessed for the years 1970 and 1971 pursuant to sections 685(a)(1) and (2) of the Tax Law are cancelled.

C. That the petitions of Erwin J. S. Bensdorf are granted to the extent of cancelling the penalty imposed pursuant to sections 685(a)(1) and (2) of the Tax Law for the years 1970 and 1971 and the Income Tax Bureau is hereby directed to accordingly modify the notices of deficiency issued January 28, 1974 and March 25, 1974 and that except as so granted, the petitions are in all other respects denied.

DATED: Albany, New York
March 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER