

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SIDNEY GLICK

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 (XXXXXX) Period(s) :
1965, 1966 and 1967

State of New York
County of Albany

Marsina Donnini, 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 22 day of August, 19 77, she served the within

Notice of Decision by (certified) mail upon Sidney Glick

~~XXXXXX~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sidney Glick
67-38 108th Street
Forest Hills, New York 11375

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 ~~XXXXXX~~
~~XXXXXX~~ petitioner herein and that the address set forth on said wrapper is the
last known address of the ~~XXXXXX~~ petitioner.

Sworn to before me this

22 day of August, 1977.

Marsina Donnini

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY GLICK

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article ~~13~~ 23 of the :
Tax Law for the Year ~~1965, 1966 and 1967~~ :
1965, 1966 and 1967

State of New York
County of Albany

Marsina Donnini, 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 22 day of August, 1977, she served the within Notice of Decision by (certified) mail upon Rene Zerah, CPA (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Ms. Rene Zerah, CPA
299 Broadway
New York, 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) 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

22 day of August, 1977.

Marsina Donnini

Janet Mack



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227
August 22, 1977

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

Sidney Glick
67-38 108th Street
Forest Hills, New York 11375

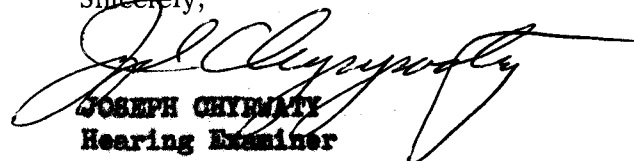
Dear Mr. Glick:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **(b) 722** of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within **4 Months** from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,


JOSEPH CHYNOWETH
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SIDNEY GLICK	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law for	:	
the Years 1965, 1966 and 1967.	:	

Petitioner, Sidney Glick, residing at 67-38 108th Street, Forest Hills, New York 11375, has filed a petition for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 01112)

A small claims hearing was held before William Valcarcel, Small Claims Hearing Officer, on November 16, 1976 at 3:00 p.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioner appeared by Rene Zerah, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (A. Schwartz, Esq. of counsel).

ISSUE

Whether the petitioner's income from his activities as a salesman is subject to the unincorporated business tax.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The petitioner, Sidney Glick, filed New York State income tax resident returns for the years 1965, 1966 and 1967, wherein he reported both salary and business income. An unincorporated business tax return was filed for the year 1965, wherein he reported his net business income, but did not include his salary income.

2. Upon audit, the Income Tax Bureau issued a deficiency holding his salary and business income both subject to the unincorporated business tax.

3. Petitioner was employed by Melody Bra and Girdle Co., Inc. as a girdle salesman, during the years 1965, 1966 and 1967. His compensation was subject to payroll taxes, and payments were made by his employer for state and Federal unemployment insurance, workmen's compensation, and to the Melody Retirement Trust.

4. Petitioner also sold for approximately seven other firms during the years 1965, 1966 and 1967. The merchandise he sold for these firms included competitive and noncompetitive items such as bras, girdles, sleepwear and women's underwear. Petitioner conceded that this income is subject to the unincorporated business tax.

5. Although Melody Bra and Girdle Co., Inc. directed the petitioner as to when and where to solicit business, they did not restrict his selling activities as to the amount of time and effort used, or as to the type of merchandise sold.

6. Petitioner would usually sell two or more lines of merchandise to each client without a clear division of time and effort.

7. Petitioner did not file unincorporated business tax returns for the years 1966 and 1967 upon the advice of his accountant.

8. That although Melody Bra and Girdle Co., Inc. treated the petitioner as their employee, sufficient direction and control were not exercised by them to create an employer-employee relationship within the meaning and intent of former regulation section 20 NYCRR 281.3.

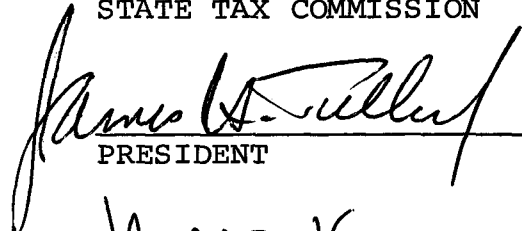
9. That the income received by petitioner, Sidney Glick, from the various firms he represented, including Melody Bra and Girdle Co., Inc., during the years 1965, 1966 and 1967 constituted income from his regular business of selling, subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

10. That the petition of Sidney Glick is granted to the extent that the penalty imposed in accordance with section 685(a) of the Tax Law for the years 1966 and 1967 is cancelled for reasonable cause.

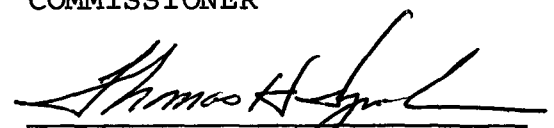
11. That the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued August 30, 1971; and, that except as so granted, the petition of Sidney Glick is in all other respects denied.

DATED: Albany, New York
August 22, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER