

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
MICHAEL GOLDSTEIN : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Taxes :
under Article 23 of the Tax Law for the :
Years 1969, 1970 and 1971. :
:

Petitioner, Michael Goldstein, 11 Hedgerow Lane, Jericho, New York, 11753, 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 1969, 1970 and 1971. (File No. 00245).

A formal hearing was held before Julius E. Braun, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on August 27, 1976 at 9:00 A.M. Petitioner appeared by Marvin Zucker, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Alexander Weiss, Esq. of counsel).

ISSUE

Whether the business activities of petitioner, Michael Goldstein, as a sales representative, constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. On October 29, 1973, as the result of an audit, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Michael Goldstein, imposing unincorporated business tax upon income drawn from his activities as a sales agent for the years 1969, 1970 and 1971. Accordingly, the Income Tax Bureau issued a Notice of Deficiency in the amount of \$8,864.68.

2. For the years in issue, petitioner, Michael Goldstein was a sales representative whose income was solely derived from commissions. Eighty percent of his income was received from the Phoenix Slipper Co., Secaucus, New Jersey and twenty percent from the Nohel Manufacturing Corp., Providence, Rhode Island. Products of these companies were non-competitive.

3. Phoenix Slipper Co. deducted a percentage of petitioner, Michael Goldstein's commissions for the space in Secaucus, New Jersey used by him as an office and warehouse, and in New York, New York used as a showroom. This amounted to \$10,000.00 in 1971. He received no benefits for hospitalization or pension programs. He filed Federal and State estimated tax returns, a Federal Schedule C and a "Computation of Social Security Self-Employment Tax" during the years 1969, 1970 and 1971. In 1971, he filed a "Statement in Support of Deduction for Contributions made on Behalf of Self-Employed Individuals to Pension and Profit Sharing Plans".

He received nothing for expenses incurred, and he deducted said expenditures on his returns. When necessary, petitioner hired and paid for his assistants. His selling territory was unrestricted. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his sales activities and techniques or over the time that was devoted to sales.

4. Petitioner, Michael Goldstein, was advised by his accountants that he was not required to file unincorporated business tax returns for the years in issue.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Michael Goldstein, from the Phoenix Slipper Company and the Nohel Manufacturing Corp. constituted income from his regular business as a sales representative and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

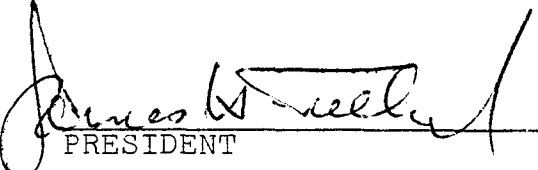
B. That the aforesaid activities of petitioner, Michael Goldstein, during the years 1969, 1970 and 1971, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That petitioner, Michael Goldstein had reasonable cause for failing to file unincorporated business tax returns for the years 1969, 1970 and 1971.

D. That the petition of Michael Goldstein is granted to the extent that the penalty is waived; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued October 29, 1973; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
February 28, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER