

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD D. and BARBARA LANDOWNE

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) ~~or Period(s)~~
1966 and 1967.

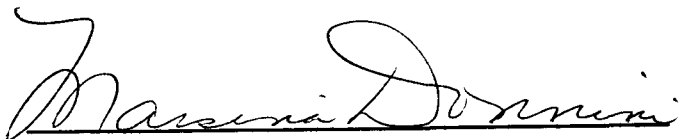
State of New York
County of Albany

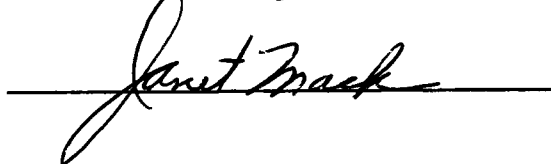
Marsina Donnini, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 24th day of August, 1977, she served the within Notice of Decision by (certified) mail upon Harold D. & Barbara Landowne (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. & Mrs. Harold D. Landowne
88 Cardinal Road
Manhasset, New York 11030
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 the~~) petitioner.

Sworn to before me this

24th day of August, 1977.


Marsina Donnini


Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD D. and BARBARA LANDOWNE

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) ~~on Period(s)~~ :
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 24th day of August, 1977, she served the within
Notice of Decision by (certified) mail upon William Borden
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: William Borden, Esq.
5 East 57th Street
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

24th day of August, 1977.

Marsina Donnini

Janet Muel



STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

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

August 24, 1977

Mr. & Mrs. Harold D. Landowne
88 Cardinal Road
Manhasset, New York 11030

Dear Mr. & Mrs. Landowne:

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 **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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD D. and BARBARA LANDOWNE	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1966 and 1967.	:	

Petitioners, Harold D. and Barbara Landowne, 88 Cardinal Road, Manhasset, New York 11030, have filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1966 and 1967. (File No. 01174). A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 29, 1977 at 10:45 A.M. Petitioners appeared by William Borden, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUE

Did compensation received from Blue Star Leather Manufacturing Corporation during the years 1966 and 1967 constitute wages received as an employee or was it income derived from the carrying on of an unincorporated business and therefore subject to the unincorporated business tax?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Petitioner, Harold D. Landowne, was a manufacturer's representative for many principals during the years 1966 and 1967. His net income after deductions for business expenses was \$25,503.80 in 1966 and \$25,119.46 in 1967.

2. One of petitioner's principals was Blue Star Leather Manufacturing Corporation which issued withholding tax statements to petitioner for both years. Each withholding tax statement reported wages in the amount of \$7,800.00 and indicated amounts deducted for withholding taxes and social security. It was the petitioner's contention that all of his business income was subject to the unincorporated business tax except the amounts that were shown on the withholding tax statements which constituted wages as an employee.

3. Blue Star Leather Manufacturing Corporation permitted petitioner to represent other companies. There was no indication that said corporation controlled or directed petitioner's activities in respect to time spent or the manner in which petitioner's activities were performed. There was no division of time between Blue Star Leather Manufacturing Corporation and the other principals. Said corporation did not reimburse petitioner for business expenses incurred in its behalf. In addition to the amounts reported on the withholding tax statements, said corporation paid petitioner bonuses from which no deductions were made.

4. That the compensation received by petitioner, Harold D. Landowne, during the years 1966 and 1967 from Blue Star Leather Manufacturing Corporation constituted income derived from the carrying on of an unincorporated business in accordance with the meaning and intent of section 703 of the Tax Law and was not wages received 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.

5. That the petition of Harold D. and Barbara Landowne is denied and the Notice of Deficiency in the amount of \$1,475.81 issued January 31, 1972 is sustained.

DATED: Albany, New York
August 24, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER