

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HYMAN LEWIS

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)~~ :
1966 through 1973.

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 17th day of June, 1977, she served the within Notice of Decision by (certified) mail upon Hyman Lewis ~~(representative of)~~ the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

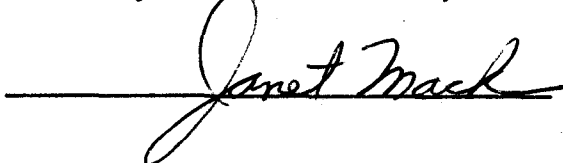
Mr. Hyman Lewis
825 Prescott Street
North Valley Stream, New York 11580

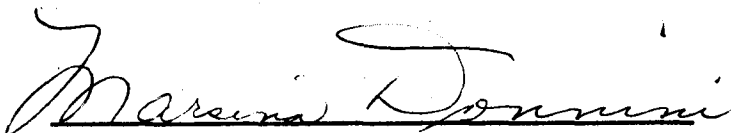
and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

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

17th day of June, 1977.





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Taxes under Article (x) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1966 through 1973.

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 17th day of June, 1977, she served the within Notice of Decision by (certified) mail upon George Mandel (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

George Mandel, CPA
Seidman & Seidman
One North Broadway
White Plains, New York 10601

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

17th day of June, 1977.

Marsina Donnini

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

June 17, 1977

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

Mr. Hyman Lewis
825 Prescott Street
North Valley Stream, New York 11580

Dear Mr. Lewis:

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

Please take further notice that pursuant to
Section(8) **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,

Paul B. Coburn
Supervising Tax
Hearing Officer

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
HYMAN LEWIS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1966 through 1973.	:	

Petitioner, Hyman Lewis, 825 Prescott Street, N. Valley Stream, New York 11580, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1966 through 1973 inclusive. (File No. 10641).

A formal hearing was held before Harvey B. Baum, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 12, 1977 at 10:45 A.M. Petitioner appeared by George Mandel, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq. of counsel).

ISSUE

Whether the business activities of petitioner, Hyman Lewis, as a sales representative during the years 1966 through 1973

inclusive constituted the conduct of an unincorporated business under section 703 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Hyman Lewis, timely filed New York State resident returns for the years 1966 through 1973, inclusive, but did not file unincorporated business tax returns for those years.

2. Statements of audit changes and notices of deficiency were issued against the petitioner for those years, due to his failure to file or pay unincorporated business tax for those years, assessing a total basic tax due of \$6,321.64, with total interest due of \$1,262.19, for a total deficiency due of \$7,583.83.

3. Petitioner timely filed petitions for a redetermination of unincorporated business tax due for the years 1966 through 1973, inclusive.

4. Petitioner, Hyman Lewis, resided in Valley Stream, Long Island. He was a sales representative for Bergen Laboratories, Inc., of Paterson, New Jersey, a manufacturer of electronic equipment. He spent very little time at the company offices, though occasionally he was expected to attend meetings to receive technical assistance from engineers and management, to assist him in the sale of Bergen's products.

5. Petitioner covered a sales territory within the Metropolitan New York area and Connecticut. He worked for Bergen Laboratories, Inc. alone, and devoted his full time to their employ. He was not allowed to work for anyone else. Although petitioner had some discretion as to which customers he was to see on a particular day, and scheduled his own hours, the company gave him leads as to the customers he was to see within his territory. All sales were subject to the approval of the management of the company, and sales were not allowed to be made to certain military accounts. Furthermore, petitioner was expected to report his activities to the company a few times a day.

6. Petitioner, Hyman Lewis, was paid a guaranteed draw against commissions, with an additional commission based upon a percentage of the company's total sales volume, plus a yearly ceiling on commissions earned. Further, the company had the right to terminate the petitioner upon notice.

7. Petitioner maintained an office at his home in Valley Stream, Long Island, for his convenience, where he worked alone. He maintained a desk, phone, and files there for which he took a deduction on his Federal income taxes. Although petitioner was sometimes reimbursed for extraordinary travel expenses and for

occasional trips outside his territory, he paid for his normal expenses and was reimbursed 50% for gifts he made in connection with his sales activities.

8. Withholding taxes were taken from petitioner and paid by the company for the years 1969, and 1970, but for other years none were taken, purportedly because the company felt it uneconomical to do so.

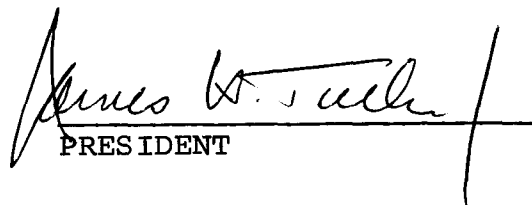
CONCLUSIONS OF LAW

A. That petitioner, Hyman Lewis, was an employee for Bergen Laboratories, Inc. during the subject years, within the meaning and intent of section 703(b) of the Tax Law, and, therefore, was not subject to the unincorporated business tax for those years. There are sufficient indications that the company exercised that degree of control and supervision over the manner of petitioner's work performance so that he is deemed an "employee" of the company and not an "independent contractor" within the meaning of the aforementioned section of the Tax Law. (Lieberman v. Gallman, 384 N.Y.S.2d 252, App.Div. 3d Dept. 1976).

B. That the petition of Hyman Lewis is accordingly granted, and the notices of deficiency heretofore issued are hereby cancelled.

DATED: Albany, New York
June 17, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER