

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD POCHTER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (ss) 23 of the :
Tax Law for the Year(s) ~~or Period(s)~~ :
1966 through 1972

State of New York
County of Albany

Violet Walker , 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 14th day of June , 1977 , she served the within

Notice of Decision by (certified) mail upon Leonard Pochter

~~(representative of)~~ the petitioner in the within proceeding,

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

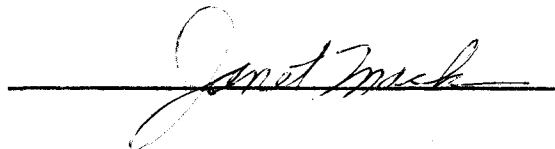
as follows: Mr. Leonard Pochter
25 East 86th Street
New York, New York 10028

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

14th day of June , 1977.



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LEONARD POCHTER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :
a Revision of a Determination or a Refund :
of Unincorporated Business :
Taxes under Article (a) 23 of the :
Tax Law for the Year(s) ~~XXXXXXX~~ :
1966 through 1972

State of New York
County of Albany

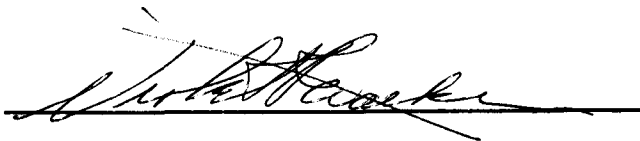
Violet Walker, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 14th day of June, 1977, she served the within
Notice of Decision by (certified) mail upon Bertrand Leopold, Esq.
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bertrand Leopold, Esq.
18 Joseph Street
New Hyde Park, 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

14th day of June, 1977.

Jared Mack





STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

June 14, 1977

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

TELEPHONE: (518) 457-1723

Mr. Leonard Pochter
25 East 86th Street
New York, New York 10028

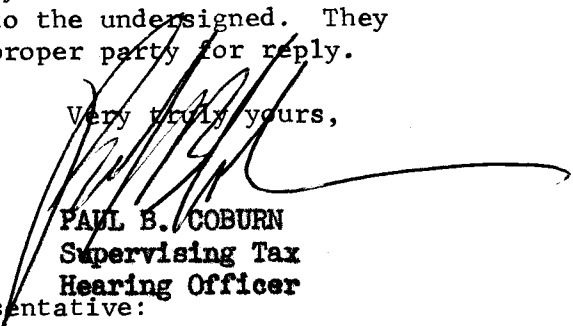
Dear Mr. Pochter

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

Please take further notice that pursuant to
Section ~~61~~ 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 :
LEONARD POCHTER : 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 1972. :
:

Petitioner, Leonard Pochter, 25 East 86th Street, New York, New York 10028, 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 1972. (File No. 00621). A formal hearing was held before Edward L. Johnson, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on September 14, 1976, at 9:15 a.m. Petitioner appeared by Bertrand Leopold. The Income Tax Bureau appeared by Peter Crotty, Esq. (Richard Kaufman, Esq., of counsel).

ISSUES

I. Whether the business activities of petitioner, Leonard Pochter, as an outside commission salesman for two wholesale apparel firms during the years 1966 through 1972 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Leonard Pochter, timely filed New York State combined Income Tax Returns with his wife, Miriam Pochter, for each of the years 1966 through 1972. He did not file unincorporated business tax returns for any of these years.

2. On April 12, 1974, a Notice of Deficiency was issued against petitioner, Leonard Pochter for the years 1966, 1967 and 1968, setting forth the unincorporated business tax due as follows:

<u>YEAR</u>	<u>DEFICIENCY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1966	\$2269.95]	\$952.47	\$3222.42
1967	1962.79	705.82	2668.61
1968	<u>2619.47</u>	<u>784.79</u>	<u>3404.26</u>
Total	\$6852.21	2443.08	\$9295.29

Another Notice of Deficiency also dated April 12, 1974, was issued against the petitioner, Leonard Pochter, for the years 1969, 1970, 1971 and 1972 with the deficiency detailed as follows:

<u>YEAR</u>	<u>DEFICIENCY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1969	\$2784.09	\$ 667.07	\$3451.16
1970	3248.85	583.49	3832.34
1971	1367.63	163.57	1531.20
1972	<u>1766.00</u>	<u>131.36</u>	<u>1897.36</u>
Total	\$9166.57	\$1545.49	\$10712.06

To each notice of deficiency was attached a statement of audit changes showing how the Income Tax Bureau had computed the unincorporated business tax alleged to be due.

3. The Income Tax Bureau stated on each statement of audit changes that based upon the decision of the State Tax Commission dated November 16, 1972, for the tax years 1962, 1963, 1964 and 1965, the business activities of the petitioner, Leonard Pochter, were held to constitute the carrying on of an unincorporated business, and that the income therefrom was subject to the unincorporated business tax.

4. Petitioner, Leonard Pochter, timely filed a petition for redetermination of unincorporated business tax for the years 1966 through 1972.

5. During the years 1966 through 1972, the petitioner, Leonard Pochter, was a salesman of women's apparel. For Imports International, Inc. the petitioner, Leonard Pochter, sold Italian and domestic knit sportswear. For Sills and Co., Inc. the petitioner, Leonard Pochter, sold suede and leather-goods products. Both principals paid the petitioner, Leonard Pochter, a straight commission based on net sales made to buyers in petitioner's assigned territory. Each principal had a written contract with the petitioner, Leonard Pochter, which limited him to carrying just one other non-competing line. Each principal agreed to pay the petitioner, Leonard Pochter, a weekly drawing account against commissions. Each agreement required that petitioner, Leonard Pochter, spend 50% of his working day in that firm's showroom when petitioner was not on the road. Sill and Co required him to be available in the firm's showroom until one o'clock. Import International required the petitioner to be available and in the

firm's showroom in the latter half of the workday. Each principal reserved the right to require petitioner, Leonard Pochter, to go on the road for approximately 16 weeks per year, whenever it was deemed necessary by the firm.

6. Each firm withheld Federal and New York State income taxes, social security taxes and disability insurance premiums from petitioner's weekly draw. No deductions were made from commissions paid in excess of the guaranteed draw. Petitioner, Leonard Pochter, was not reimbursed for his expenses. He did not have any employees. He did not belong to the pension plan of either of his two principal firms.

7. Neither firm exercised substantial control or supervision over the sales activities or techniques of the petitioner, Leonard Pochter, except to limit the territory in which he could sell. When on the road, petitioner, Leonard Pochter, reported daily by telephone to both principals, advising them of his itinerary, sales and plans. When in New York City and during his half day in each firm's showroom, petitioner, Leonard Pochter, was required to wait on customers, help with correspondence, assist in shipping and service

house customers and those from territories other than his own. For these "in house" activities the petitioner, Leonard Pochter, did not receive any commissions or specific remuneration.

8. Petitioner, Leonard Pochter, engaged in the same activities in the years 1966 through 1972 as he had for the previous five years and upon like terms and conditions.

CONCLUSIONS OF LAW

A. That the petitioner, Leonard Pochter, was not an employee of the firms he represented as a commission salesman in the years 1966 through 1972 in accordance with the meaning and intent of section 703(b) of the Tax Law. Petitioner, Leonard Pochter, was an independent contractor carrying on the business of selling the products of non-competing firms in the women's apparel industry. None of the principals for whom petitioner, Leonard Pochter, acted as commission salesman exercised that degree of control and direction requisite to warrant petitioner's being considered an employee within the provisions of the Tax Law. Matter of Britton v State Tax Commission, 22A.D. 987, aff'd 19 N.Y. 2d 613.

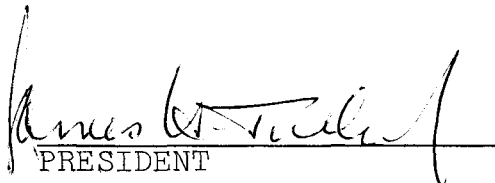
B. That the decision of the State Tax Commission as to the petition relating to the tax years 1962, 1963, 1964 and 1965, while not evidence as to the tax years 1966 through 1972,

is relevant as to the Tax Commission's view of the Tax Law where the petitioner states his business activities in the prior period were continued unchanged throughout the taxable years 1966 through 1972.

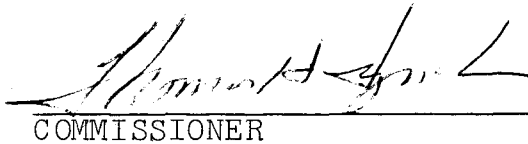
C. That the petition of Leonard Pochter is denied, and the notices of deficiency issued April 12, 1974 are sustained.

DATED: Albany, New York
June 14, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER