

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD ROSENBLUM

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)~~xxx~~Period(s) 1968, :
1969, 1970, 1971, 1972 and 1973.

State of New York
County of Albany

Bruce Batchelor , being duly sworn, deposes and says that
~~He~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 27th day of April , 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Leonard Rosenblum

(~~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 Rosenblum
3347 Hewlett Avenue
Merrick, New York 11566

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~~
~~xxxx~~) 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

27th day of April , 1977.

Bruce Batchelor

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD ROSENBLUM

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) ~~1968~~ 1968, :
1969, 1970, 1971, 1972 and 1973.

State of New York
County of Albany

Bruce Batchelor, being duly sworn, deposes and says that
~~he~~ is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 27th day of April, 1977, ~~he~~ served the within
Notice of Decision by (certified) mail upon Eugene Kenner

(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Eugene Kenner, CPA
280 North Central Avenue
Hartsdale, New York 10530

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

27th day of April, 1977.

Bruce Batchelor

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

April 27, 1977

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

Mr. Leonard Rosenblum
3347 Hewlett Avenue
Merrick, New York 11566

Dear Mr. Rosenblum:

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

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

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEONARD ROSENBLUM	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Taxes	:	
under Article 23 of the Tax Law for the	:	
Years 1968, 1969, 1970, 1971, 1972 and	:	
1973.	:	

Petitioner, Leonard Rosenblum, residing at 3347 Hewlett Avenue, Merrick, New York, has filed a petition for redetermination of deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1968 through 1973 (File No.'s 9-4650906 and 3-30731046). A small claims hearing was held before Joseph Chyrywaty, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 18, 1976 at 2:45 P.M. Petitioner appeared by Eugene Kenner, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (William Fox, Esq. of counsel).

ISSUE

Was the income derived from the petitioner, Leonard Rosenblum's activities as a sales representative during the years 1968 through 1973, subject to the unincorporated business tax imposed under Article 23 of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Leonard Rosenblum, and his wife, Grace, filed New York State income tax resident returns for the years 1968 through 1973. He did not file unincorporated business tax returns for these years.

2. On May 22, 1972, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Leonard Rosenblum, for the years 1968 and 1969. On June 30, 1975, the Income Tax Bureau issued a second Notice of Deficiency against the petitioner for the years 1970 through 1973. Both deficiencies imposed unincorporated business tax on income derived from petitioner's activities as a sales representative.

3. During the years at issue, petitioner, Leonard Rosenblum, sold lingerie for Lisette, a Division of Athlone Industries, Inc. and also sold womens loungewear for Lisanne, Inc. The items sold by him for each company were non-conflicting and sales for both companies were made to substantially the same customers.

4. Petitioner, Leonard Rosenblum's activities consisted of making sales to customers in Pennsylvania, Ohio, Indiana and Illinois, the territory assigned him by his principals. He traveled between 16 and 20 weeks a year and when on the road, he furnished his principals with full itineraries of the accounts he handled. When not traveling, the petitioner reported daily to the New York City offices of Lisette between the hours

of 9:00 A.M. and 1:30 P.M. and to Lisanne, Inc. between 2:30 and 5:30 P.M. He scheduled his appointments and prepared his itineraries at these times.

5. Petitioner, Leonard Rosenblum, was compensated for his services to Lisette Lingerie and Lisanne, Inc. by commissions on the sales that he effected for each respectively. From his commissions, Lisette Lingerie withheld New York State and Federal income taxes and social security taxes. Lisanne, Inc. made no deductions from the commissions they paid him. Neither firm reimbursed him for his traveling or selling expenses. He claimed the expenses he incurred as employee business expenses on his U.S. individual income tax returns for the years in issue.

6. Neither of the firms exercised control over the working hours of the petitioner, Leonard Rosenblum, while he was on the road. His own expertise as a salesman determined in what manner he would consummate sales for his principals.

CONCLUSIONS OF LAW

A. That the petitioner, Leonard Rosenblum, was not an employee of Lisette Lingerie, Division of Athlone Industries, Inc. or Lisanne, Inc. in accordance with the meaning and intent of section 703(b) of the Tax Law even though Lisette withheld New York State and Federal income taxes as well as social security tax. Petitioner was rather an independent contractor using his discretion as to division of time, and selling techniques necessary to generate a sale and his resultant commission. The principals

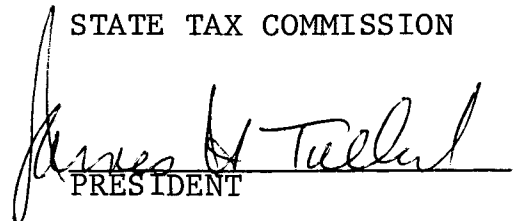
for whom petitioner sold did not exercise sufficient control and direction requisite to warrant petitioner's being considered an employee.

B. That the activities of petitioner, Leonard Rosenblum, during the years 1968, 1969, 1970 1971, 1972 and 1973 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Leonard Rosenblum is denied and the Notices of Deficiency issued May 22, 1972 and June 30, 1975 are sustained.

DATED: Albany, New York
April 27, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

10-10-10