

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
ISIDORE WIRTHEIMER

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) :
1968, 1969 and 1970. ~~XXXXXXXXXX~~

State of New York
County of Albany

Bruce Batchelor , 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 8th day of April , 1977, ~~she~~ served the within
Notice of Decision by (certified) mail upon Isidore Wirtheimer

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Isidore Wirtheimer
185 West End Avenue
New York, New York 10023

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

8th day of April , 1977.

Bruce Batchelor

Janet Muck

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ISIDORE WIRTHEIMER

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) :
1968, 1969 and 1970.

AFFIDAVIT OF MAILING

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 8th day of April, 1977, he served the within
Notice of Decision by (certified) mail upon Sidney Weinrib, CPA
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sidney Weinrib, CPA
171-30 Ashby Avenue
Flushing, NY 11358
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

8th day of April, 1977.

Janet Mack

Bruce Batchelor



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 8, 1977

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

Mr. Isidore Wirthheimer
185 West End Avenue
New York, New York 10023

Dear Mr. Wirthheimer:

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

Please take further notice that pursuant to
Section(s) **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	:	
ISIDORE WIRTHEIMER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1968, 1969 and 1970.	:	

Petitioner, Isidore Wirtheimer, residing at 185 West End Avenue, New York, New York 10023, 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, 1969 and 1970. (File No. 0-58996336). A small claims hearing was held before Harry Huebsch, Small Claims Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 15, 1976 at 2:45 P.M. Petitioner, Isidore Wirtheimer, appeared by Sidney Weinrib, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq., (Irwin Levy, Esq. of counsel).

ISSUE

Did petitioner, Isidore Wirtheimer's diamond selling activities during the years 1968, 1969 and 1970 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Isidore Wirtheimer, and his wife, filed New York State combined resident income tax returns for 1968, 1969 and 1970. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau held that income received during the years 1968, 1969 and 1970 resulting from petitioner, Isidore Wirtheimer's selling activities constituted the carrying on of an unincorporated business. A Notice of Deficiency dated March 31, 1975, was issued in the amount of \$1,784.68 unincorporated business tax due, plus \$706.85 penalty, plus \$543.91 interest for a sum of \$3,035.44.

3. Petitioner, Isidore Wirtheimer, was a diamond salesman during the years 1968, 1969 and 1970. He sold diamonds for M. Shamroth and Sons, which was located in New York. Petitioner, Isidore Wirtheimer, was paid on a commission basis. He did not receive a withholding tax statement and no deductions were made from his compensation. Petitioner, Isidore Wirtheimer, was not reimbursed by his principal for any expenses and filed Schedule C in order to report business expenses for Federal income tax purposes.

4. Petitioner, Isidore Wirtheimer, was not assigned specific office space by his principal. No control over his activities was exercised by his principal except for customer leads and sales territory. Petitioner, Isidore Wirtheimer, was not prevented from selling for other principals by M. Shamroth and Sons. He had his own letterhead and billhead. In certain areas, petitioner, Isidore Wirtheimer, was required to guarantee payment by clients. He was

not required to meet a sales quota.

5. Petitioner, Isidore Wirtheimer, relied on advice of his accountant as to not filing unincorporated business tax returns.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Isidore Wirtheimer, from M. Shamroth and Sons during the years 1968, 1969 and 1970, constituted income from his regular business of selling diamonds 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, Isidore Wirtheimer, during the years 1968, 1969 and 1970 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, Isidore Wirtheimer, acted in good faith and that his failure to file unincorporated business tax returns for the years 1968, 1969 and 1970 was not willful neglect.

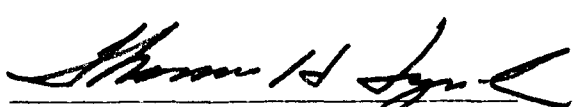
D. That the petition of Isidore Wirtheimer is granted only in respect of cancellation of the penalty and is in all other respects denied.

DATED: Albany, New York
April 8, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER