

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY MORGAN

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) ~~xxxPeriod(s)~~ 1971 :
through 1974.

State of New York
County of Albany

John Huhn , 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 6th day of February , 1978, she served the within
Notice of Decision by (certified) mail upon Sidney Morgan
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Sidney Morgan
6 Glamford Road
Great Neck, New York 11023
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

6th day of February , 1978.

Art Mack

John Huhn



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

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

February 6, 1978

Sidney Morgan
6 Glamford Road
Great Neck, New York 11023


Dear Mr. Morgan:

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

You have now exhausted your right of review at the administrative level. Pursuant to section(s) ~~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 Chyrywat,
Hearing Examiner

cc: ~~Petitioner's Representative~~
~~Commissioner's Representative~~

Taxing Bureau's Representative

FINDINGS OF FACT

1. On February 24, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner, Sidney Morgan, imposing unincorporated business tax of \$3,596.72 on the income received by him from his activities as a salesman during the years 1971 through 1974. The aforesaid Notice of Deficiency was issued in accordance with a decision of the State Tax Commission in the Matter of Sidney Morgan dated January 29, 1975, which found that petitioner's activities during the years 1969 and 1970 constituted the carrying on of an unincorporated business.

2. During the years 1971 through 1974, petitioner was a men's sportswear salesman representing only Schott Bros., Inc. Prior to 1971, petitioner represented two principals. In October of 1970, Schott Bros., Inc. insisted that petitioner discontinue representing a second principal.

3. Petitioner was paid by Schott Bros., Inc. on a commission basis. Schott Bros., Inc. withheld Federal income taxes and social security tax from a portion of the commissions paid to him during 1971, 1972 and 1973, and from the total commissions paid to him during 1974. Petitioner was also covered by workman's compensation and unemployment insurance. New York State income tax was not withheld from the commissions paid to him.

4. Petitioner was assigned the New York Metropolitan Area by Schott Bros., Inc. In the performance of his sales activities, he called Schott Bros., Inc. daily with a report of customer activity.

He was expected to visit customers on a regular basis and to visit Schott Bros., Inc.'s plant monthly for a progress report. The sales made by petitioner were subject to the approval of Schott Bros., Inc. Petitioner's vacation was subject to the approval of Schott Bros., Inc.

5. Petitioner was not reimbursed for expenses he incurred while selling sportswear for Schott Bros., Inc. He filed Federal Schedule "C", Profit or Loss from Business or Profession, for 1971 through 1974. On these schedules, he claimed expenses for an office located in his home and for an office telephone.

6. During the years in issue, petitioner realized small amounts of commission income from the sale of insurance. His total commissions earned from the sale of insurance were \$192.43 for 1971; \$131.34 for 1972; \$103.60 for 1973; and \$74.49 for 1974. These commissions resulted generally from insurance policy renewals for members of his family.

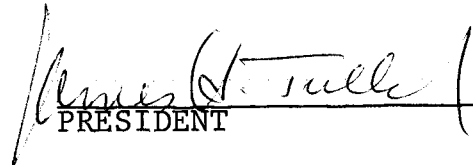
CONCLUSIONS OF LAW

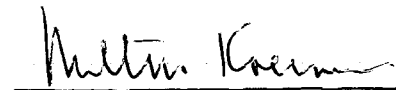
A. That Schott Bros., Inc. exerted sufficient control and supervision over the activities of petitioner, Sidney Morgan, to permit petitioner's designation as an employee within the meaning and intent of section 703(b) of the Tax Law. Therefore, the income derived from petitioner's activities as a sales representative was not subject to the unincorporated business tax.

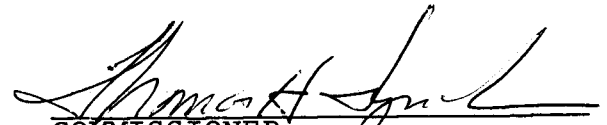
B. That the petition of Sidney Morgan is granted and the Notice of Deficiency issued February 24, 1976 is cancelled.

DATED: Albany, New York
February 6, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER