

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAUL H. PEARL

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)~~ :
1967, 1968, 1969, 1970, 1972 and 1973.

State of New York
County of Albany

John Huhn , 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 24th day of April , 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Saul H. Pearl
(~~representative of~~) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Mr. Saul H. Pearl
17 Cooper Road
Scarsdale, New York 10583
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

24th day of April , 1978

[Signature]

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

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1967, 1968, 1969, 1970, 1972 and 1973.

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County of Albany


John Huhn, 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 24th day of April, 1978, ~~he~~ served the within
Notice of Decision by (certified) mail upon Herbert M. Haber

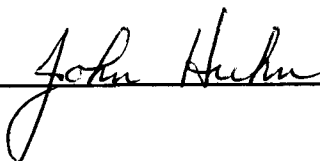
(representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Herbert M. Haber, CPA
Paneth, Haber & Zimmerman
150 East 58th Street
New York, New York 10022
and by depositing same enclosed in a postpaid properly 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

24th day of April, 1978







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

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

April 24, 1978

Mr. Saul H. Pearl
17 Cooper Road
Scarsdale, New York 10583


Dear Mr. Pearl:

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

You have now exhausted your right of review at the administrative level. Pursuant to section **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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SAUL H. PEARL	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1967, 1968, 1969, 1970, 1972 and	:	
1973.	:	

Petitioner, Saul H. Pearl, 17 Cooper Road, Scarsdale, New York 10583, 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 1967, 1968, 1969, 1970, 1972 and 1973 (File No. 12301).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on July 8, 1977 at 1:15 P.M. The petitioner appeared with Herbert Haber. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a sales representative was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Saul H. Pearl, filed New York State income tax returns for the years 1967, 1968, 1969, 1970, 1972 and 1973.

2. On September 29, 1975, the Income Tax Bureau issued notices of deficiency against petitioner, on the grounds that the income derived from his activities as a sales representative during the years 1967, 1968, 1969, 1970, 1972 and 1973 was subject to unincorporated business tax.

3. During the period at issue, petitioner, Saul H. Pearl, was a sales representative of Gravely Furniture Company, Inc. (hereinafter "Gravely"), a firm located and incorporated in the State of Virginia. Gravely also maintained a showroom at 200 Lexington Avenue, New York, New York.

4. Petitioner was compensated by his principal on a commission basis. It did not withhold payroll taxes from his compensation, nor did it reimburse him for his selling expenses.

5. Petitioner represented other product divisions of Gravely such as Ridge-way Clocks, Finishing Touch Furniture, Worth Furniture and Wythville Chairs. When petitioner was not on the road, he conducted his activities for the firm and its various divisions from its showroom in New York City and from his office at home.

6. Petitioner asserted that his activities included the collection of accounts receivable and the servicing of customer complaints.

7. Gravely assigned petitioner a specific territory and established all his prices and terms of sale. All orders submitted by its sales representatives were subject to its approval.

8. The personnel representing Gravely at the showroom in New York City normally consisted of two individuals, namely, petitioner and another sales representative, a Mr. Walter Groh. Mr. Groh was originally hired by petitioner with the consent of Gravely. Although Mr. Groh was subject to sales policies and terms imposed by Gravely, he considered himself self-employed and not subject to any direction and control from the petitioner.

9. Mr. Groh was paid his commissions by petitioner, Saul H. Pearl, who also issued an annual information Federal return (Form 1099). However, petitioner asserted that Mr. Groh's commissions were paid to petitioner by Gravely with the stipulation that these monies were to be turned over to Mr. Groh. Petitioner also asserted that he did not receive an "override" commission from Mr. Groh's sales activities and that Mr. Groh's commissions were not paid from petitioner's earnings or commissions. Documentary evidence establishing petitioner's contentions regarding the origin and nature of the commissions paid to the other sales representative was not submitted.

10. Although Gravely exercised some supervision over petitioner's activities (so as to assure itself that petitioner was covering his territory and servicing customers), said firm did not exercise any control over his sales endeavors, nor did it control or regulate the manner in which petitioner attempted to solicit business.

11. Petitioner filed Federal Schedule "C" and paid self-employment taxes for the years 1967, 1968, 1969, 1970, 1972 and 1973.

CONCLUSIONS OF LAW

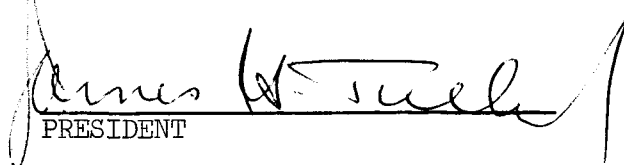
A. That sufficient direction and control was not exercised over the activities of petitioner, Saul H. Pearl, by Gravely so as to result in an employee-employer relationship in accordance with the meaning and intent of section 703(b) of the Tax Law.

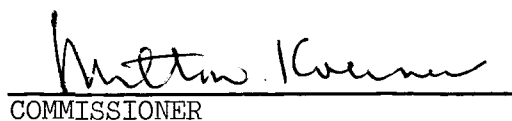
B. That the income derived from petitioner's activities during the years 1967, 1968, 1969, 1970, 1972 and 1973 constituted income from his regular business of selling and, therefore, was subject to unincorporated business tax in accordance with the meaning and intent of sections 701 and 703 of the Tax Law.

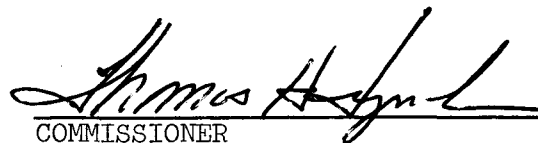
C. That the petition of Saul H. Pearl is denied and the notices of deficiency issued September 29, 1975 are sustained, together with such additional interest as may be lawfully due.

DATED: Albany, New York
April 24, 1978

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER