

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY GUTLERNER

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

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 24th day of January , 1979 , She served the within
Notice of Decision by (certified) mail upon Sidney Gutlerner

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

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

as follows: Sidney Gutlerner
20 Hill Park Avenue
Great Neck, New York 11021

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)~~
~~XXXXXX~~ 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 January , 19 79

Marilyn J. Papineau

John Huhn



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

January 24, 1979

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

Sidney Gutlerner
20 Hill Park Avenue
Great Neck, New York 11021

Dear Mr. Gutlerner:

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 **(x) 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

~~XXXXXXXXXXXXXXXXXXXX~~

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

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

Petitioner, Sidney Gutlerner, 20 Hill Park Avenue, Great Neck, New York 11021, 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 1968, 1969, 1970, 1971, 1972 and 1973 (File Nos. 13927 and 13928).

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 March 9, 1978 at 2:45 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (William Fox, Esq., of counsel).

ISSUE

Whether petitioner's income from his activities as a salesman is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Sidney Gutlerner, and his wife, Betty Gutlerner, timely filed New York State combined income tax returns for 1968 through 1973. Unincorporated business tax returns were not filed for said years.

2. On March 25, 1974 and June 30, 1975, the Income Tax Bureau issued two notices of deficiency against petitioner, asserting unincorporated business tax (plus interest) in the respective amounts of \$1,964.02 for 1968, 1969 and 1970 and \$857.37 for 1971, 1972 and 1973.

3. Petitioner, Sidney Gutlerner, was a furniture salesman who represented the firms of Edencraft, Inc. (hereinafter "Edencraft") and Elmwood Upholstery Co., Inc. (hereinafter "Elmwood") during the years 1968 through 1973. Occasionally during these years, petitioner would also sell for one or more other firms and would earn a relatively small amount of commission from them.

4. Edencraft, Inc. paid petitioner a straight salary of \$300.00 per week, regardless of the volume of sales generated by his activities. Elmwood Upholstery Co., Inc. compensated petitioner on a commission basis. Neither firm withheld payroll taxes nor reimbursed petitioner for his selling expenses.

5. Petitioner was subject to territorial and price restrictions imposed by the various firms he represented.

6. Petitioner was required to report his sales activities to Edencraft and Elmwood. However, they did not exercise any control over his sales endeavors nor did they control or regulate the manner in which he attempted to solicit business. The products of both firms were usually sold to the same customers without any division of petitioner's time and effort.

7. Petitioner was provided with desk space at the showroom or factory of Edencraft and Elmwood.

CONCLUSIONS OF LAW

A. That none of the firms which petitioner represented exercised sufficient direction and control over his activities so as to cause him to become their employee, within the meaning and intent of section 703(b) of the Tax Law.

B. That the income derived from petitioner's activities as an outside salesman during the years 1968 through 1973 constituted income from his regular business of selling; thus, said income was subject to the imposition of unincorporated business tax under section 701(a) of the Tax Law.

C. That the petition of Sidney Gutlerner is denied and the notices of deficiency issued March 25, 1974 and June 30, 1975 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York
January 24, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER