

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Philip & Bunny Seitz :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :

of a Determination or a Refund of

Unincorporated Business Tax :

under Article 23 of the Tax Law

for the Years 1969 & 1970. :

State of New York

County of Albany

Jay Vredenburg, 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 28th day of September, 1979, he served the within notice of Decision by certified mail upon Philip & Bunny Seitz, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Philip & Bunny Seitz

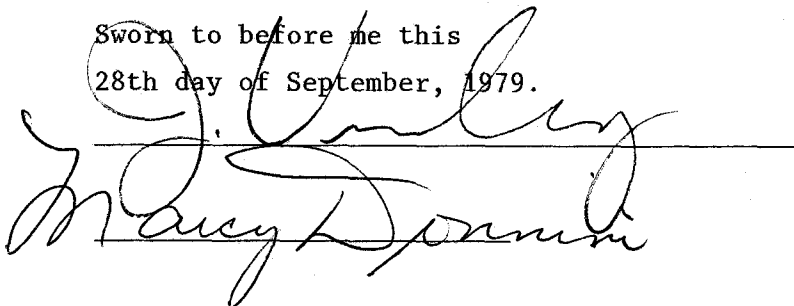
99 Randall Ave.

Freeport, NY 11520

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 petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
28th day of September, 1979.


Nancy L. Spurr

STATE OF NEW YORK
STATE TAX COMMISSION

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Unincorporated Business Tax :

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State of New York

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Jay Vredenburg, 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 28th day of September, 1979, he served the within notice of Decision by certified mail upon Alvin I. Goidel the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Alvin I. Goidel
Goidel, Goidel & Helfenstein
127 John St.
New York, NY 10038

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
28th day of September, 1979.

Mary D. ...

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Philip & Bunny Seitz
99 Randall Ave.
Freeport, NY 11520

Dear Mr. & Mrs. Seitz:

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(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,



cc: Petitioner's Representative
Alvin I. Goidel
Goidel, Goidel & Helfenstein
127 John St.
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
PHILIP SEITZ and BUNNY SEITZ	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1969 and 1970.	:	

Petitioners, Philip Seitz and Bunny Seitz, 99 Randall Avenue, Freeport, New York 11520, 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 1969 and 1970 (File Nos. 14984 and 14985).

A small claims hearing was held before Harry Huebsch, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 30, 1978 at 10:45 A.M. Petitioners appeared by T. Alan Wyle, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioner Philip Seitz' sales activities during 1969 and 1970 constituted the carrying on of an unincorporated business.

II. Whether the Income Tax Bureau properly imposed penalties pursuant to sections 685(a) (1) and 685(a) (2) of the Tax Law against petitioners, for their failure to file unincorporated business tax returns for 1969 and 1970.

FINDINGS OF FACT

1. Petitioners, Philip and Bunny Seitz, timely filed New York State personal income tax returns for 1969 and 1970. They did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that petitioner Philip Seitz' sales activities constituted the carrying on of an unincorporated business. Accordingly, it issued a Notice of Deficiency against petitioners on September 25, 1972 for 1969 in the amount of \$626.40 in unincorporated business tax, plus \$234.90 in penalty and \$91.86 in interest, for a total due of \$953.16. The Income Tax Bureau issued a Notice of Deficiency against Philip Seitz on October 28, 1974 for 1970 in the amount of \$534.93 in unincorporated business tax, plus \$235.37 in penalty and \$113.47 in interest, for a total due of \$883.77.

3. Bunny Seitz was not involved in her husband's sales activities.

4. Philip Seitz performed services as a salesman for Kaufman Brothers Metal Products, Inc. ("Kaufman") during the years at issue. He sold a multitude of items comprising component parts of hardware to manufacturers of luggage, toys and gifts, to the paper industry and to others. His territory was the United States and Canada.

5. Petitioner Philip Seitz was paid a 5% commission on all merchandise that was shipped to and paid for by the customer. Income taxes and social security were not withheld from his compensation. He was not covered by disability insurance or by workman's compensation. He received no employee benefits and financed his own retirement plan.

6. Petitioner Philip Seitz contended that he was reimbursed by Kaufman for one-half of his expenses for hotel rooms and transportation costs; that he was provided with desk space at Kaufman's place of business; that Kaufman "frowned" on his carrying the line of any other principal; that inactive accounts and certain other accounts within said petitioner's territory were occasionally taken away from him and became house accounts; that all orders were subject to Kaufman's approval; that although he had his own business cards, Kaufman did not permit him to use them; that he was "expected" to attend certain trade

shows; and that there was an "unwritten obligation" to the effect that he was to work at Kaufman's place of business servicing customers, and that he was not to hire assistants.

7. Petitioner Philip Seitz filed Federal Schedule "C" to claim unreimbursed expenses. His unreimbursed expenses exceeded 50% of his gross income. In 1969 his commissions totaled \$44,876.91. He reported expenses of \$24,390.48, which included telephone expense of \$2,846.06, entertainment of \$1,040.00, depreciation of \$1,608.35, rent of \$4,030.00, taxes of \$578.23, insurance of \$457.00 and gifts of \$1,435.80. The return also reflected deductions for business contributions of \$503.75 and retirement plan payments of \$1,800.00.

8. Petitioner Philip Seitz maintained an office in his home from which he transacted business by phone, handled some correspondence, and kept records of orders and correspondence. The office contained files, a typewriter and other equipment.

9. Petitioner Philip Seitz was not required to work stated hours and days. He made up his own travel itinerary. He contacted customers in specific industries and decided whether or not he had something to offer them. He used his own initiative and methods in selling. Mr. Seitz did not submit documentary or any satisfactory evidence to show any substantial degree of control exercised by Kaufman over his day-to-day activities.

10. Petitioner Philip Seitz relied on the advice of his accountant that he was not required to file unincorporated business tax returns.

CONCLUSIONS OF LAW

A. That petitioner Bunny Seitz was not involved in Philip Seitz' selling activities. The Income Tax Bureau is hereby directed to remove her name from the Notice of Deficiency which was issued on September 25, 1972 for 1969.

B. That petitioner Philip Seitz' sales activities during 1969 and 1970 did not constitute services performed as an employee of Kaufman Borthers Metal Products, Inc., in accordance with the meaning and intent of section 703(b) of the Tax Law; that said activities constituted the carrying on of an unincorporated business, within the meaning and intent of section 703(a) of the Tax Law; thus, the income derived therefrom was subject to unincorporated business tax under section 701 of the Tax Law.

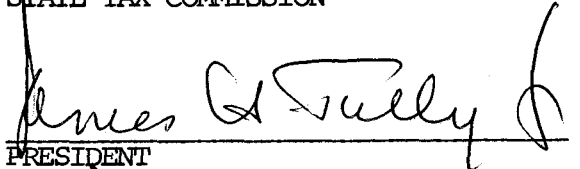
C. That petitioner Philip Seitz' failure to file unincorporated business tax returns for the years at issue was due to reasonable cause and not due to willful neglect; therefore, all penalties imposed pursuant to sections 685(a) (1) and 685(a) (2) of the Tax Law are cancelled.

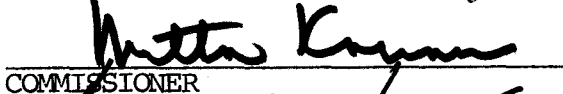
D. That the petitions of Philip Seitz and Bunny Seitz are granted only to the extent that all penalties are cancelled. The Income Tax Bureau is hereby directed to modify the notices of deficiency issued September 25, 1972 and October 28, 1974 and that, except as so granted, the petitions are in all other respects denied.

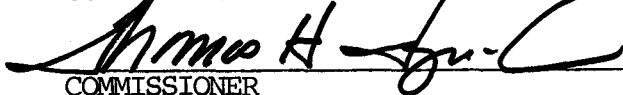
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER