

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of

Carl Sherman :

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 Year 1972. :

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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Carl Sherman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

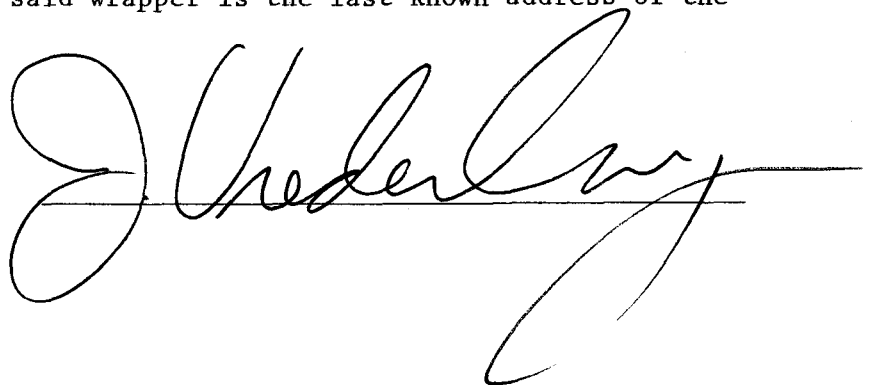
Carl Sherman
1421 E. 101st St.
Brooklyn, NY 11236

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
26th day of November, 1979.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Carl Sherman :

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 1973 & 1974. :

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 26th day of November, 1979, he served the within notice of Decision by certified mail upon Carl Sherman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Carl Sherman
1421 E. 101st St.
Brooklyn, NY 11236

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
26th day of November, 1979.

Joanne Knapp

J. Vredenburg

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

November 26, 1979

Carl Sherman
1421 E. 101st St.
Brooklyn, NY 11236

Dear Mr. Sherman:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
CARL SHERMAN	:	DECISION
	:	
for Redetermination of Deficiencies or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1972, 1973 and 1974.	:	

Petitioner, Carl Sherman, 1421 East 101st Street, Brooklyn, New York 11236, filed petitions for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1972, 1973 and 1974 (File Nos. 14982 and 17258).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 7, 1979 at 10:45 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner's activities as a salesman constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, Carl Sherman, filed New York State Income Tax Returns for the years 1972, 1973 and 1974. Petitioner did not file New York State Unincorporated Business Tax Returns for said years.
2. On October 28, 1974, the Income Tax Bureau issued a Notice of Deficiency against petitioner, imposing unincorporated business tax in the amount of \$67.20, plus penalty of \$21.50 [pursuant to sections 685(a)(1) and 685(a)(2)]

and interest of \$7.75, for a total due of \$96.45, for the year 1972. On March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency against petitioner for the years 1973 and 1974 imposing unincorporated business tax in the amount of \$685.39, plus penalty of \$204.45 [pursuant to sections 685(a)(1) and 685(a)(2)] and interest of \$69.23, for a total due of \$959.07. The Income Tax Bureau did so on the grounds that the income petitioner received from his activities as a salesman was subject to unincorporated business tax.

3. During the years 1972 through 1974, petitioner was an outside salesman selling dresses for from two to five principals. His customers were small retail shops in the greater New York-New Jersey area. Petitioner would make up his itinerary for the day. He telephoned his principals at night giving them the dress orders he had received that day and received any instructions they may have. Petitioner would try to open new accounts with stores other than those stores which were assigned to him by his principals. Petitioner was paid by the firms he represented on either a commission basis or salary. Petitioner contended he was required by his principals to help fill orders and take inventory for no remuneration.

4. His principals did not exercise any substantial supervision or control over his sales techniques or over the time he devoted to sales. Their interest was only as to his results. His principals assigned sales territory and approved or denied his customers' credit.

5. Petitioner did not receive life insurance, medical insurance or pension benefits from any of the principals during the years at issue.

6. Petitioner was not reimbursed for business expenses by any of the firms nor did he have a written contract with any of the principals.

CONCLUSIONS OF LAW

A. That the income received by petitioner from the principals he represented during the years 1972, 1973 and 1974 constituted income from his regular

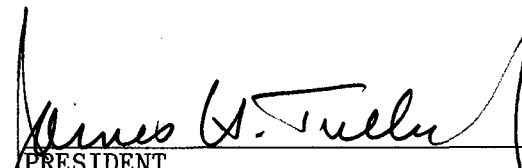
business of selling ladies' dresses. The aforesaid activities of petitioner during the years 1972, 1973 and 1974 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law; thus, his income derived therefrom was subject to unincorporated business tax in accordance with section 701 of the Tax Law.


B. That the petitions of Carl Sherman are denied and the Notices of Deficiency issued on October 28, 1974 and March 29, 1976 are sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

NOV 26 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER