

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Jay L. Teitelbaum, Estate of :
Phyllis Teitelbaum, Executrix : 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 1965 - 1967. :

State of New York
County of Albany

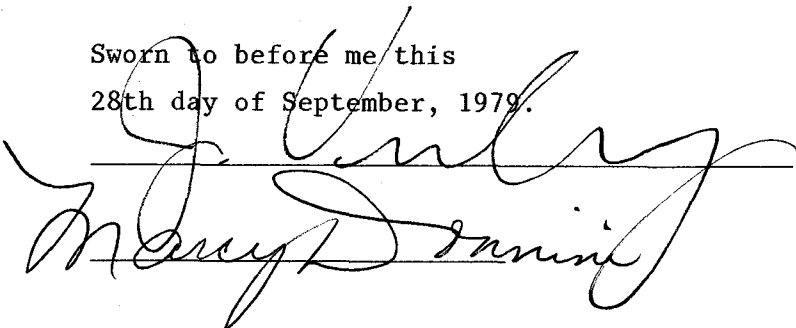
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Jay L. Teitelbaum, Estate of, Phyllis Teitelbaum, Executrix, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jay L. Teitelbaum, Estate of
Phyllis Teitelbaum, Executrix
24 Nantwick St.
Lido Beach, NY 11561

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.



Mary D. Savini

STATE OF NEW YORK
STATE TAX COMMISSION

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of :
Jay L. Teitelbaum, Estate of :
Phyllis Teitelbaum, Executrix : AFFIDAVIT OF MAILING
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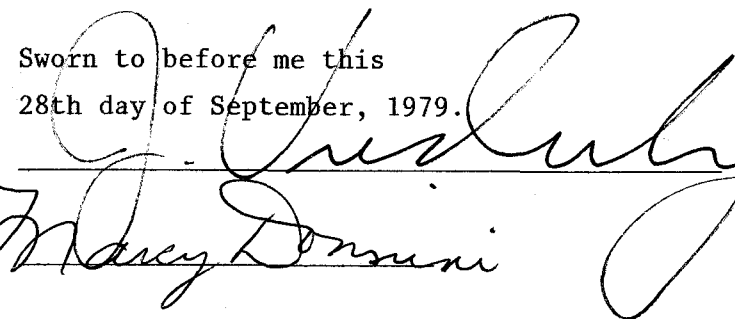
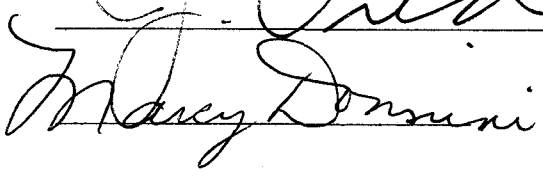
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 28th day of September, 1979, he served the within notice of Decision by certified mail upon Bruce S. Leffler the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mr. Bruce S. Leffler
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.

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

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

September 28, 1979

Jay L. Teitelbaum, Estate of
Phyllis Teitelbaum, Executrix
24 Nantwick St.
Lido Beach, NY 11561

Dear Ms. Teitelbaum:

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
Bruce S. Leffler
127 John St.
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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| In the Matter of the Petition | : | |
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| of | : | |
| | : | |
| THE ESTATE OF JAY L. TEITELBAUM | : | DECISION |
| (Phyllis Teitelbaum, Executrix) | : | |
| for Redetermination of a Deficiency or | : | |
| for Refund of Unincorporated Business | : | |
| Tax under Article 23 of the Tax Law | : | |
| for the Years 1965, 1966, and 1967. | : | |

Petitioner, the Estate of Jay L. Teitelbaum, c/o Phyllis Teitelbaum, (a/k/a Mrs. Phyllis Kiesch) Executrix, 24 Nantwick Street, Lido Beach, New York 11561, 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 1965, 1966 and 1967 (File No. 14350).

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 September 28, 1978 at 10:30 A.M. Petitioner appeared by Bruce S. Leffler, Esq. 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 salesman was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Jay L. Teitelbaum (now deceased), and Phyllis Teitelbaum, his wife, filed New York State combined income tax resident returns for 1965, 1966 and 1967, on which he reported business income which was derived from his activities as a sales representative. Unincorporated business tax returns were not filed for said years.

2. On January 31, 1972, the Income Tax Bureau issued a Notice of Deficiency against petitioner, asserting unincorporated business tax of \$717.34, plus penalty (pursuant to section 685(a) of the Tax Law) of \$179.49 and interest of \$217.54, for a sum of \$1,114.37.

3. Petitioner was a commission salesman for Alonzi Furniture Company and Silvercraft Furniture Co. during 1965, 1966 and 1967. Petitioner's wife, Phyllis Teitelbaum, contended that:

- (a) Petitioner's selling territory was limited to Long Island, New York City and to parts of New Jersey.
- (b) Petitioner was required to service accounts, collect delinquent accounts, trace lost orders, investigate complaints, and issue written reports on the results of these activities.
- (c) Petitioner was required to distribute and explain promotional material.
- (d) Petitioner was required to attend training seminars.
- (e) Petitioner was required to follow and conduct his sales activities in accordance with a sales manual furnished by his principals.
- (f) Petitioner sold for two principals with their knowledge and consent.
- (g) Petitioner was required to maintain a daily log of all his activities, and submit it on Friday of each week.
- (h) Petitioner was required to be at his principal's showroom on Friday of each week.
- (i) At various times, petitioner was required to attend regional furniture shows.
- (j) Petitioner was required to obtain permission from his principals before taking a vacation.

(k) Petitioner was not required to devote a specific amount of time and effort between the two principals.

4. Petitioner failed to introduce any documentary evidence to support his contentions.

CONCLUSIONS OF LAW

A. That petitioner did not sustain the burden of proof which requires him to establish that neither of the two firms which he represented exercised sufficient direction and control over him, so as to create an employer-employee relationship, within the meaning and intent of section 703(b) of the Tax Law.

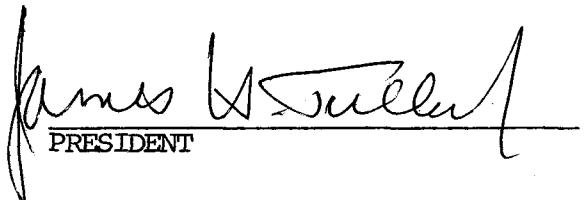
B. That petitioner's activities as a salesman during 1965, 1966 and 1967 constituted the carrying on of an unincorporated business tax, within the meaning and intent of section 701(a) of the Tax Law.

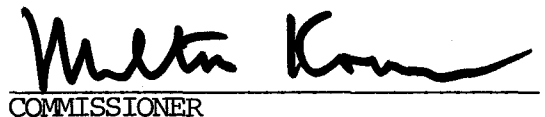
C. That the petition of the Estate of Jay L. Teitelbaum is denied and the Notice of Deficiency issued January 31, 1972 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA-26 (4-76) 25M

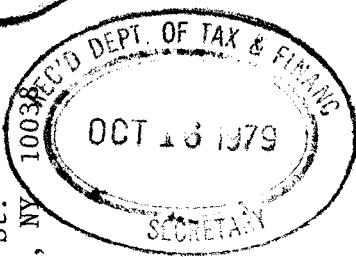
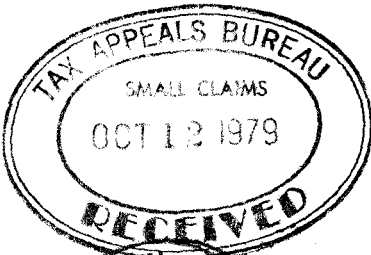
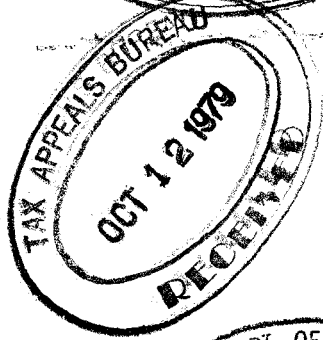
STATE OF NEW YORK
Department of Taxation and Finance
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

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RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

REGISTERED
No. 182277
MAIL

Gaidel

Bruce S. Leffler
127 John St.
New York, NY 10038



JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
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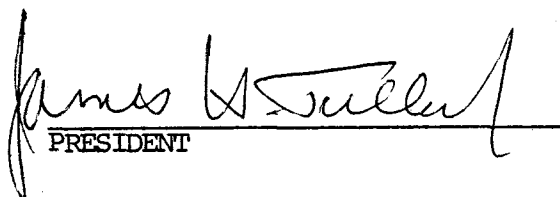
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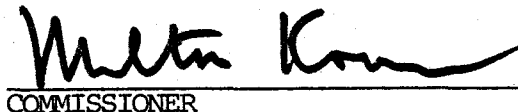
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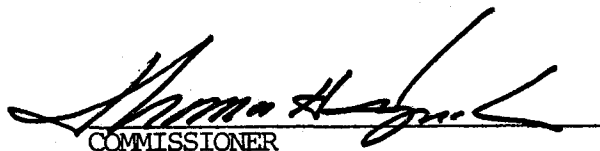
DATED: Albany, New York

SEP 28 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER