

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY P. GOLDBERG

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 Year(s) ~~for Period(s)~~ 1968, :
1969 and 1970.

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 14th day of February , 1979 , he served the within
Notice of Decision by (certified) mail upon Harry P. Goldberg

~~(representative of)~~ the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Harry P. Goldberg
245-20 Grand Central Parkway
Bellerose, New York 11426

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)~~
~~(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

14th day of February , 1979.

Marilyn J. Papinau

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY P. GOLDBERG

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 Year(s) ~~xxxPeriod(s)~~ 1968, :
1969 and 1970.

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 14th day of February , 1979 , she served the within
Notice of Decision by (certified) mail upon Bruce S. Leffler, Esq.

(representative of) the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Bruce S. Leffler, Esq.
Goidel, Goidel & Helfenstein, P.C.
127 John Street
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

14th day of February , 1979.

Marilyn J. Papineau

John Huhn



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

February 14, 1979

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

Harry P. Goldberg
245-20 Grand Central Parkway
Bellerose, New York 11426

Dear Mr. Goldberg:

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 Chyrywaty
Hearing Examiner

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HARRY P. GOLDBERG	:	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 and 1970.	:	

Petitioner, Harry P. Goldberg, 245-20 Grand Central Parkway, Bellerose, New York 11426, 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 and 1970 (File Nos. 12623 and 12624).

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 May 18, 1978. Petitioner appeared by Bruce S. Leffler, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether petitioner's activities as a salesman during 1968, 1969 and 1970 constituted the carrying on of an unincorporated business, within the meaning and intent of section 703 of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Harry P. Goldberg, and his wife, Leah R. Goldberg, timely filed joint New York State income tax resident returns for 1968, 1969 and 1970, whereby he reported income from his activities as a salesman. He did not file unincorporated business tax returns for said years on the advice of his attorney.

2. On March 31, 1975, the Income Tax Bureau issued a Notice of Deficiency against petitioner, asserting unincorporated business tax of \$3,313.37, plus penalty and interest of \$2,302.47, for a total of \$5,615.84 on petitioner's activities as a salesman.

3. Petitioner, Harry P. Goldberg, rendered services as a furniture salesman during 1968, 1969 and 1970 for the firm of David M. Lee and Company (hereinafter "the company") located in Richmond, Virginia. He was compensated on a commission basis with no withholding of payroll taxes and no reimbursement of selling expenses.

4. Petitioner was assigned a specific territory within the New York metropolitan area, whereby specific clients were designated for him to sell to and service.

5. The company maintained an office and showroom at 200 Lexington Avenue, New York, New York, at a location known to the industry as "The Furniture Exchange." Petitioner was required to be in attendance at this office and showroom on every Friday, where he was required to write up his orders and to attend to visiting customers from various locales. However, he was only entitled to commissions from customers located within his assigned territory.

6. Petitioner was periodically required to visit the main office and factory in Richmond, Virginia. The travel and lodging expenses incurred by petitioner for these trips were reimbursed by the company.

7. Petitioner scheduled his own appointments which were subject to change by the company. The company would periodically require petitioner to visit certain customers, to service complaints and to promote the sale of specific items that were not selling in accordance with their expectations.

8. Petitioner was provided with a sales manual which he was required to adhere to. All sales were subject to the terms, conditions and approval of the company.

9. Petitioner was forbidden from representing other firms and was required to devote all of his selling time and effort to the company. On special holidays, petitioner was assigned to a customer's retail business to assist and promote sales.

10. Petitioner maintained a self-employed retirement ("Keogh") plan and paid self-employment taxes during 1968, 1969 and 1970.

11. Petitioner was periodically required to assist in the training of new salesmen.

CONCLUSIONS OF LAW

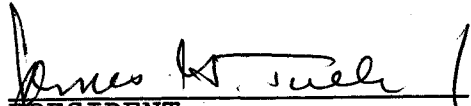
A. That David M. Lee and Company exercised sufficient direction and control over petitioner's activities, so as to cause him to become its employee, within the meaning and intent of section 703(b) of the Tax Law; thus, the income derived from petitioner's activities as a salesman was not subject to unincorporated business tax.

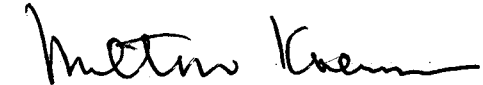
B. That the petition of Harry P. Goldberg is granted and the Notice of Deficiency issued March 31, 1975 is cancelled.

DATED: Albany, New York

February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER