

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR GOODMAN

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) or Period ~~(s)~~ 1961;
1962, 1963 and January 1, 1964 through
April 30, 1964.

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 Seymour Goodman

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

Seymour Goodman
60 Heather Drive
Roslyn, NY 11576

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)~~
~~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

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

February 14, 1979

**Seymour Goodman
60 Heather Drive
Roslyn, NY 11576**

Dear Mr. Goodman:

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 **(a) 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,

**Michael Alexander
Supervising Tax
Hearing Officer**

cc: ~~Reimbursement Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR GOODMAN

DECISION

for Redetermination of a Deficiency or
for Refund of Unincorporated Business
Tax under Article 23 of the Tax Law for
the Years 1961, 1962, 1963 and for the
Period January 1, 1964 through April 30,
1964.

Petitioner, Seymour Goodman, 60 Heather Drive, Roslyn,
New York 11576, 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 1961, 1962, 1963 and
for the period January 1, 1964 through April 30, 1964 (File
No. 00212).

Petitioner waived a formal hearing and submitted the case
to the State Tax Commission, based on the entire record contained
in the file.

ISSUE

Whether petitioner's activities as a commissioned shoe
salesman during 1961, 1962, 1963 and for the period January 1,
1964 to April 30, 1964, constituted the carrying on of an unin-
corporated business, within the meaning and intent of section 703
of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Seymour Goodman, and his wife, Esther Goodman, timely filed joint New York State income tax resident returns for the years 1961 through 1964.

2. On September 27, 1971, the Income Tax Bureau issued a Notice of Deficiency against petitioner, asserting unincorporated business tax for said years of \$6,809.65, plus interest of \$3,303.74, for a total of \$10,113.39. The Notice of Deficiency was based on a prior determination of the State Tax Commission dated December 23, 1970 (for 1959 and 1960), in which petitioner's activities as a shoe sales' representative constituted the carrying on of an unincorporated business, within the meaning and intent of section 703 of the Tax Law.

3. Petitioner timely filed a petition for redetermination of said deficiency on December 24, 1971, alleging the same facts regarding his business activities as in the prior proceeding.

4. Petitioner worked on commission and did not have a written employment contract. He conducted his sales activities under the name of "Sears Company" and in connection therewith, filed a certificate of doing business with the county clerk of New York County.

5. Prior to September 1, 1962, petitioner, Seymour Goodman, was engaged by Putterman-Loree Footwear Sales Co., 47 West 34th Street, New York, New York, to sell women's footwear manufactured by the companies which it exclusively represented. Petitioner was told what he could sell, to whom he could sell, the quantities

he could sell and the prices at which he could sell. His territories and customers were assigned by the resident partner, Mr. Ely Sag, and he was not permitted to sell for anyone other than those designated and represented by Putterman-Loree Footwear Sales Co. On September 1, 1962, Putterman-Loree Footwear Sales Co. was "inactivated;" thereafter, petitioner worked exclusively for Putterman Sales Co. which represented Milton Shoe Manufacturing Co., Incorporated. He was under the direct supervision and control of Mr. Charles Putterman who was the resident partner of Putterman Sales Co. and also the president of Milton Shoe Manufacturing Co., Incorporated. Petitioner became an employee of Putterman Sales Co. on April 20, 1964.

6. Petitioner filed Schedule "C" with his Federal income tax returns for 1961, 1962 and 1963 and paid self-employment tax for said years. He did not file Schedule "C," nor did he pay self-employment tax for 1964, when his income from Putterman Sales Co. consisted of wages (subject to withholding) and commissions.

7. Petitioner was provided (at no charge or cost to him) with office facilities at Putterman-Loree Footwear Sales Co. He also used one room in his home where he did some of his "paper-work," etc. in connection with his selling activities. He did not employ any assistants and was reimbursed only for those expenses incurred to accommodate his principals, provided that the activity was not part of his regular selling procedure. He was expected to pay his own travel, entertainment and other selling expenses.

8. Petitioner, Seymour Goodman, failed to submit any documentary or other sufficient evidence to show that the degree of supervision and control over his sales activities by the resident partner of Putterman-Loree Footwear Sales Co. was any different in 1961 and during the period January 1, 1962 through August 31, 1962 than in 1959 and 1960. Petitioner also failed to submit sufficient evidence to show that the degree of supervision and control exercised over his activities by Putterman Sales Co. and Milton Shoe Manufacturing Co., Incorporated was sufficient to show that an employer-employee relationship existed during the period September 1, 1962 through December 31, 1962, the year 1963 and the period January 1, 1964 through April 30, 1964.

CONCLUSIONS OF LAW

A. That petitioner's activities as a commissioned shoe salesman during 1961, 1962, 1963 and for the period January 1, 1964 through April 30, 1964, constituted the carrying on of an unincorporated business, within the meaning and intent of section 703 of the Tax Law; thus, the income derived therefrom was not compensation received as an employee, within the meaning and intent of section 703(b) of the Tax Law.

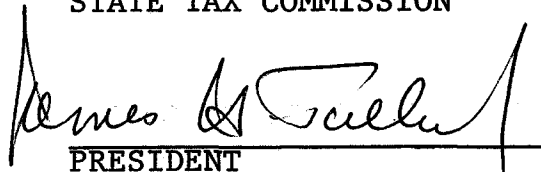
B. That the carrying on of said unincorporated business ceased on April 30, 1964, whereupon petitioner became an employee exempt from this tax within the meaning and intent of section 703(b) of the Tax Law.

C. That the petition of Seymour Goodman is denied and the Notice of Deficiency issued September 27, 1971 is sustained.

DATED: Albany, New York

February 14, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER