

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STANLEY SAGER

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) ~~XXXXXX~~ :
1968.

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 23rd day of February, 1979, he served the within

Notice of Decision by (certified) mail upon Stanley Sager

~~XXXXXXXXXXXX~~ the petitioner in the within proceeding,

by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows:

Stanley Sager
Soundview Lane
Port Washington, New York 11050

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

Sworn to before me this

23rd day of February, 1979.

Marilyn J. Papirer

John Huhn

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

STANLEY SAGER

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) ~~1968~~ ~~1969~~ ~~1970~~ ~~1971~~ :
1968.

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 23rd day of February, 1979, He served the within
Notice of Decision by (certified) mail upon Morton Greenberg,
CPA (representative of) the petitioner in the within proceeding,
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed
as follows: Morton Greenberg, CPA
Greenberg & Greenberg
135 East 42nd Street
New York, NY 10017
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

23rd 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 23, 1979


**Stanley Sager
Soundview Lane
Port Washington, NY 11050**

Dear Mr. Sager:

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,

Joseph Chyzyewy
Supervisor of Small Claims

cc: Petitioner's Representative

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
STANLEY SAGER : DECISION
for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under :
Article 23 of the Tax Law for the Year 1968. :
:

Petitioner, Stanley Sager, Soundview Lane, Port Washington, New York 11050, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1968 (File No. 11269).

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 January 10, 1978 at 1:15 P.M. Petitioner appeared pro se and by Morton Greenberg, Esq. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

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

1. Petitioner, Stanley Sager, filed a New York State personal income tax return for 1968, but did not file a New York State unincorporated business tax return for said year.

2. The Income Tax Bureau contended that petitioner's activities during the year at issue constituted the carrying on of an unincorporated business. Accordingly, it issued a Notice of Deficiency on June 25, 1973 for \$811.06 in unincorporated business tax, plus \$204.10 in interest, for a total of \$1,015.16.

3. During 1968 petitioner performed services for Dualite Products, Inc. (hereinafter "Dualite"). Dualite was engaged in the design, manufacture and sale of illuminated signs and advertising clocks for commercial accounts. Dualite was based in Williamsburg, Ohio, and had several regional sales offices in the United States, one of which was located in New York City.

4. Petitioner performed services in the New York office. He was in charge of Dualite's New York office and hired, trained and supervised personnel, including sales representatives and full-time and part-time salesmen. Dualite paid all compensation and office expenses. Occasionally, however, petitioner paid for certain needed office supplies which he would order and for which Dualite refused payment.

5. Petitioner received an override commission from sales made by the salesmen whom he supervised. He was also a full-time salesman for key accounts in his territory which consisted of New York, New Jersey and eastern Pennsylvania, and from which he earned full commissions. Petitioner's total earning from Dualite amounted to \$44,460.82. He was paid every two or three weeks.

6. Petitioner was covered by company life insurance and a retirement plan. He was not issued a withholding tax statement. Income taxes and social security were not deducted from his compensation. He was not covered by unemployment insurance, disability or workman's compensation. He was not reimbursed for any expenses, nor was he paid for vacations. He was not required to work stated days and hours. On his own initiative, petitioner worked twelve hours a day, six days a week. He was not compensated for the overtime which he worked.

7. Petitioner filed Federal Schedule "C" to claim unreimbursed expenses (which totaled \$18,478.43) as deductions. Petitioner also reported a business loss of \$519.94 as a market analyst on his New York tax return.

8. Petitioner spoke by telephone to his superior in Ohio six or seven times a day. Petitioner made decisions in the New York office himself. His superior was mainly interested in the results of petitioner's operations, rather than in the day-to-day routine and methods used. Petitioner's superior sent him memos praising and/or criticizing his past actions and offering guidance as to petitioner's future operations.

9. On December 2, 1968, petitioner was named vice-president of Marketing for all areas, except for the home office and custom division sales. He remained in charge of the New York office. His additional duties included making final decisions for the three other regional offices on matters such as training, recruitment, territories, sales promotion aides and support services. Petitioner's compensation for these services was a percentage of sales made by the regional offices. In addition, petitioner received \$100.00 for any day spent training salesmen.

CONCLUSIONS OF LAW

A. That the activities of petitioner, Stanley Sager, during 1968 constituted the carrying on of an unincorporated business, in accordance with the meaning and intent of section 703(a) of the Tax Law. He did not render services in the capacity of an employee in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the petition of Stanley Sager is denied and the Notice of Deficiency issued June 25, 1973 is sustained.

DATED: Albany, New York

February 23, 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER