

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID SEIDEN

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~~ :  
1967, 1968 and 1969.

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 David Seiden

~~representative of~~ the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: David Seiden  
273 Parkside Drive  
Suffern, New York 10901

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

David Seiden  
273 Parkside Drive  
Suffern, New York 10901

Dear Mr. Seiden:

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 ~~(x)~~ **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 CHYRTWATT**  
**HEARING EXAMINER**

~~xxxxx Petitioner's Representative~~

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DAVID SEIDEN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1967, 1968 and 1969.	:	

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Petitioner, David Seiden, 273 Parkside Drive, Suffern, New York 10901, 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 1967, 1968 and 1969 (File No. 11298).

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 November 15, 1977 at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether petitioner's selling activities during 1967, 1968 and 1969 constituted the carrying on of an unincorporated business.

FINDINGS OF FACT

1. Petitioner, David Seiden, timely filed New York State personal income tax returns for 1967, 1968 and 1969. He did not file unincorporated business tax returns for said years.

2. The Income Tax Bureau contended that wages and commissions derived by petitioner from his selling activities were subject to unincorporated business tax. Accordingly, it issued a Notice of Deficiency on November 26, 1973 for 1967, 1968 and 1969 for \$1,178.07 in unincorporated business tax, plus \$309.15 in interest, for a total of \$1,487.22.

3. Petitioner performed services as a salesman for two principals during the years at issue, namely, Gladstone Arcuni, Inc. (hereinafter referred to as "Gladstone") and Cay Artley Apparel, Inc. (hereinafter referred to as "Cay"). The principals were manufacturers of non-competing lines of women's dresses.

4. Petitioner earned approximately one-third of his income from Cay and worked approximately one-third of his time on behalf of said corporation. His compensation represented a percentage of sales to accounts in his territory which consisted of the states of New York and New Jersey. Federal income taxes and social security were withheld from his compensation. He was covered by employment and disability insurance. Petitioner was required to sell to specific customers on a regular basis the year around. His activities were supervised by Cay's sales manager and he could take on another principal only with Cay's approval. When not traveling, petitioner was required to perform services at Cay's showroom. He was not reimbursed for expenses other than certain entertainment expenses.

5. Petitioner earned approximately two-thirds of his income from and devoted approximately two-thirds of his time to Gladstone. He was paid on a commission basis. Income taxes and social security were not withheld from his compensation, nor was he provided with any fringe benefits. Except for certain entertainment expenses, he was not reimbursed for any expenses. Petitioner was assigned a specific territory which included the states of New York, Maryland, Delaware and the District of Columbia. His daily activities were supervised by the sales manager. He could

take on another principal only with Gladstone's approval. At the time that petitioner was hired by Gladstone, he agreed to a provision of the oral contract, whereby he would bear 25% of the cost of certain advertising expenses incurred by his customers, which would benefit his commission earnings.

6. Many years prior to the years at issue, petitioner worked only for Cay as a trainee. After completion of the training period, he was assigned a territory which by itself, would not have resulted in sufficient income for petitioner. Cay's sales manager introduced petitioner to Gladstone's sales manager and petitioner was hired to perform services for Gladstone, under an oral agreement between all three parties as to the division of petitioner's time.

7. Petitioner traveled during twenty weeks of the year. He prepared his own itinerary, which required approval by the sales managers of both principals. He was also required to telephone in each day to report his activities and receive instructions. All orders were subject to approval by his principals. He was not responsible for non-paying customers.

8. When not traveling, petitioner was required to perform services every workday in the showrooms of both principals. He worked stated hours and days. Besides servicing his own accounts, he serviced house accounts and accounts from other salesmen's territories, for which he derived no commission income. His time in the showrooms was divided between and with the approval of his principals. He was supervised and directed in the showrooms by the sales managers and officers of his principals.

9. Petitioner introduced uncontroverted testimony that he did not maintain an office of his own, nor did he employ assistants. His principals provided him with office space, as well as secretarial and telephone service, at no expense to

himself. For approximately ten years prior to and during the years at issue, petitioner worked solely for Gladstone and Cay and did not offer his services to the general public. He did not have his own letterheads, business cards or business telephone listing. He was subject to company standards, their prescribed methods of selling and sales quotas. He was directed as to who and when to sell and he was frequently required to attend sales meetings. He could only take vacations during the slack periods at Christmas time and in late August. If he performed services for any other principal, he would have been discharged by both Gladstone and Cay.

CONCLUSIONS OF LAW

A. That the selling activities of petitioner, David Seiden, during 1967, 1968 and 1969 did not constitute the carrying on of an unincorporated business; therefore, petitioner performed services as an employee for both of his principals, in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the petition of David Seiden is granted and the Notice of Deficiency issued November 26, 1973 is cancelled.

DATED: Albany, New York  
February 14, 1979

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER