

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ralph Abels :
c/o Chit Chat : 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 1969, 1970, 1971. :

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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Ralph Abels, c/o Chit Chat, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

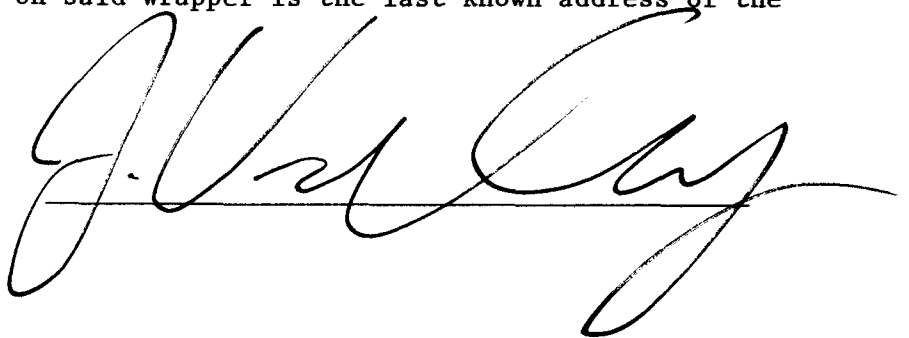
Ralph Abels
c/o Chit Chat
1333 Broadway
New York, NY 10018

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
11th day of April, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Ralph Abels :
c/o Chit Chat : AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
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Unincorporated Business Tax :
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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 11th day of April, 1980, he served the within notice of Decision by certified mail upon Bertrand Leopold 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. Bertrand Leopold
18 Joseph St.
New Hyde Park, NY 11040

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
11th day of April, 1980.

Joanne Krapp

J. Vredenburg

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

April 11, 1980

Ralph Abels
c/o Chit Chat
1333 Broadway
New York, NY 10018

Dear Mr. Abels:

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:

NYS Dept. Taxation and Finance
Deputy Commissioner and Counsel
Albany, New York 12227
Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Bertrand Leopold
18 Joseph St.
New Hyde Park, NY 11040
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
RALPH ABELS	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1969, 1970 and 1971.	:	

Petitioner, Ralph Abels, c/o Chit Chat, 1333 Broadway, New York, New York 10018, 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 1969, 1970 and 1971 (File No. 00080).

A formal hearing was held before Harry Issler, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 14, 1977 at 1:15 P.M. Petitioner appeared by Bertrand Leopold, Public Accountant. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether the business activities of petitioner, Ralph Abels, as a sales representative during the years 1969, 1970 and 1971 constituted the carrying on of an unincorporated business.

II. Whether, in the formal hearing before the Hearing Officer, petitioner has the burden of proof.

III. Whether petitioner would be allowed a deduction for contributions and payments to a Keogh Plan in arriving at unincorporated business taxable income, if petitioner is held subject to the unincorporated business tax.

IV. Whether the Income Tax Bureau properly asserted penalties, pursuant

to sections 685(a)(1), (a)(2) and (c) of the Tax Law.

FINDINGS OF FACT

1. Petitioner, Ralph Abels, timely filed New York State personal income tax returns for the years 1969, 1970 and 1971 inclusive. He did not file unincorporated business tax returns for said years.

2. A Notice of Deficiency was issued on November 26, 1973 for tax years 1969, 1970 and 1971, imposing unincorporated business tax of \$3,108.75, plus penalties for failure to file and pay the unincorporated business tax due of \$1,209.09, plus a penalty for failure to file declaration or under payment of estimated tax for personal income and unincorporated business taxes for tax years 1970 and 1971, for \$69.19, and interest of \$499.66, for a total due of \$4,886.69.

3. Petitioner, Ralph Abels, was a sales representative for L. Wohl & Company, and more specifically, Kate Greenaway Industries, Inc. (Kate Greenaway), a Division of L. Wohl & Company, who was engaged in the manufacture of children's dresses.

4. During the periods in question and for many years prior thereto, petitioner, Ralph Abels, worked for Kate Greenaway under a written "salesman's agreement". He was allowed by Kate Greenaway to carry other non-competing lines. However, he stated that even though he could carry other lines, there was an oral agreement that he would devote 90 percent of his time to Kate Greenaway so that his sales figures would not fall off. An average of 36.5 percent of petitioner's gross commission was from Kate Greenaway.

5. During the period in question, petitioner did carry other non-competing lines and his sole source of income during the periods in question were from commission sales.

6. Petitioner, Ralph Abels, maintained no office (other than an office

at home in which he kept copies of his sales slips and bulletins from his principals regarding style changes and the like).

7. Only Kate Greenaway Industries, Inc. deducted from his remuneration withholding taxes and Social Security taxes. Petitioner was covered by disability insurance, medical insurance and a pension plan through Kate Greenaway. He participated in a "Keogh Plan" because of his income from his other principals.

8. Petitioner's sales territory was assigned to him by Kate Greenaway. However, petitioner decided which customers to see and when he should see them. He had no stated hours to work. He did not hire or engage any assistants (except occasionally to assist during sales at hotel shows). All sales expenses were borne by him and were not reimbursed by any of his principals.

9. The principals had sole authority to accept or reject orders, to determine discounts, to set credit terms and to set prices. Petitioner was required to attend sales training meetings sponsored by Kate Greenaway and to present their products in a particular manner.

10. Petitioner relied on his accountant to make out his returns.

11. On his personal return, petitioner claimed charitable contributions of \$1,030.00 in 1969, \$1,025.00 in 1970 and \$1,035.00 in 1971.

12. Petitioner, Ralph Abels, contended that since no unincorporated business tax returns were filed, he omitted more than 25 percent of his business income; therefore, the burden of proof rests on the State Tax Commission.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Ralph Abels, during the years 1969, 1970 and 1971 from Kate Greenaway Industries, Inc. was derived from services performed by him in the capacity of an employee of said principal, in accordance with section 703(b) of the Tax Law. Therefore, said income is not subject to the unincorporated business tax.

B. That the income received by petitioner, Ralph Abels, from his selling activities for his other principals (1969-Blue Jeans Corp. and North Land Mfg. Ltd.; 1970-Blue Jeans Corp., North Land Mfg. Ltd., and Oxford Jewelry, Inc.; 1971-Blue Jeans Corp. and M.C. Ross Mfg. Co., Inc.), during the years 1969 through 1971, constituted income derived from the carrying on of an unincorporated business in accordance with section 703(a) of the Tax Law.

C. That section 689(e) of the Tax Law states the instances as to when the burden of proof is on the State Tax Commission. Omission of income is not one of those instances. Therefore, the burden of proof is on petitioner.

D. That petitioner, Ralph Abels, is allowed a deduction for charitable contributions in computing the unincorporated business taxable income as described in section 706(1) of the Tax Law.

E. That the amount of contributions made to a self-employed retirement plan is treated as a deduction from gross income in computing personal adjusted gross income [Code section 62(7)]. Therefore, petitioner, Ralph Abels, is not allowed a deduction for contributions made to a self-employed retirement plan in computing unincorporated business taxable income.

F. That petitioner, Ralph Abels, relying on his accountant, had reasonable cause for not filing New York State unincorporated business tax returns for 1969, 1970 and 1971; therefore, the penalties assessed pursuant to sections 685(a)(1) and (a)(2) of the Tax Law are waived.

G. That petitioner, Ralph Abels, has not shown that he qualifies as an exception to the under payment of estimated tax, according to section 685(d) of the Tax Law; therefore, the penalty imposed pursuant to section 685(c) of the Tax Law is sustained.

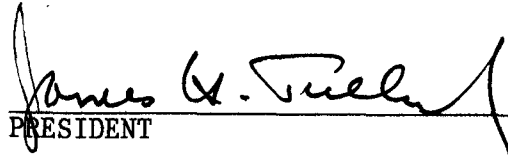
H. That the petition of Ralph Abels is granted to the extent as described in Conclusions of Law "A", "D" and "F" above. The Audit Division is hereby

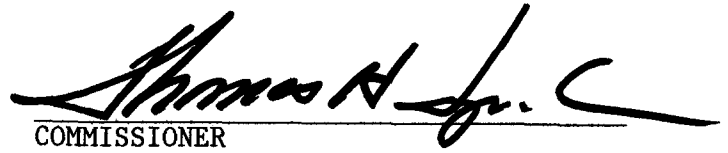
directed to modify accordingly the Notice of Deficiency issued November 26, 1973. Except as so granted, the petition is in all other respects denied.

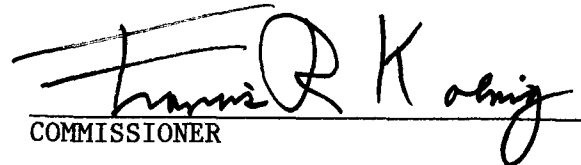
DATED: Albany, New York

STATE TAX COMMISSION

APR 11 1980


PRESIDENT


COMMISSIONER


COMMISSIONER