

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Estate of James Lipman :
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 1968 - 1972. :

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 14th day of March, 1980, he served the within notice of Decision by certified mail upon Estate of James Lipman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Estate of James Lipman
c/o Bessie Lipman
Sunrise, FL 33322

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
14th day of March, 1980.

Joanne Knapp

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Estate of James Lipman :

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 1968 - 1972. :

AFFIDAVIT OF MAILING

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 14th day of March, 1980, he served the within notice of Decision by certified mail upon David Shure the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

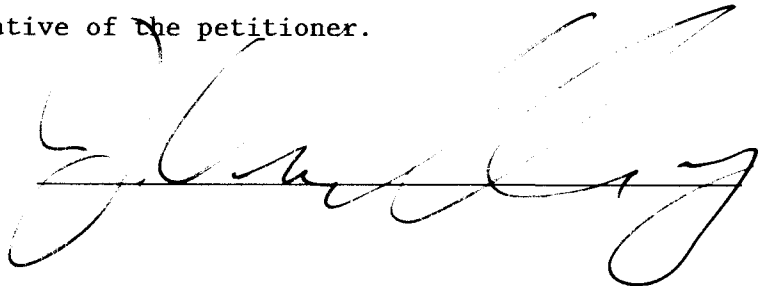
Mr. David Shure
Klem & Shure, P.C.
1577 Monroe Ave.
Rochester, NY 14618

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 March, 1980.

Joanne Knapp



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

March 14, 1980

Estate of James Lipman
c/o Bessie Lipman
3001 Sunrise Lake Dr. Blg. 19 Apt. 209
Sunrise, FL 33322

Dear Mrs. Lipman:

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
David Shure
Klem & Shure, P.C.
1577 Monroe Ave.
Rochester, NY 14618
Taxing Bureau's Representative

STATE TAX COMMISSION

for Redetermination of a Deficiency or for :
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1968 :
through 1972.

1. Petitioner, James Lipman (now deceased) and Bessie Lipman, his wife, filed New York State combined income tax resident returns for 1968 through 1972. Petitioner did not file unincorporated business tax returns for the aforementioned years.

2. On January 25, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioner imposing unincorporated business taxes for 1968 through 1972 on the grounds that his activities as a commission salesman were subject to unincorporated business tax. Adjustments were also made to net business income reported for 1968 and 1969 so as to reflect an increase in business income per Federal audit. On August 25, 1975, a Notice of Deficiency was issued asserting unincorporated business tax of \$9,167.43, plus interest of \$2,432.02, for a total due of \$11,599.45. Petitioner died on October 1, 1972, and the Estate of James Lipman timely filed a petition for redetermination of a deficiency or for refund of unincorporated business tax.

3. Petitioner's activities, during the years at issue, consisted of selling men's clothing. He represented Shepard Clothing Company, a division of United States Industries, which was his prime principal and Crown Clothing Corporation. Petitioner had no contract, oral or written, with either firm. During 1972, he discontinued representing Crown Clothing Corporation at the request of his prime principal.

4. During the years at issue, Federal and New York State taxes were not withheld from the commissions paid to him by his principals nor was he reimbursed for expenses incurred in connection with his sales activities. Petitioner's wife received a widow's death benefit from Shepard Clothing Company. However, there was no evidence to indicate that petitioner was covered by any other employment benefit program.

5. The firms for whom petitioner sold merchandise limited his territory in which he could sell, required him to report periodically on the accounts visited and encouraged him to seek new accounts within his territory. He was required to attend sales meetings and trade shows and was advised how often to visit particular accounts. His principals did not exercise any other supervision

or control over his sales activities, techniques or over the time he devoted to sales. There was no agreement between Mr. Lipman's principals as to the division of his time and effort.

6. Petitioner deducted the cost of an office in his home, auto expenses and other related business expenses on Federal Schedule C (Profit and Loss from Business or Profession).

CONCLUSIONS OF LAW

A. That commission income received by petitioner, James Lipman, from principals he represented during the years 1968 through 1972, constituted income from his regular business of selling men's clothing and did not represent compensation received as an employee in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That although his principals did assert some supervision to assure themselves that petitioner James Lipman was covering his territory and was visiting their substantial customers, they did not control or regulate the manner in which he attempted to solicit business. Therefore, the activities of petitioner, James Lipman, during 1968 through 1972, constituted the carrying on of an unincorporated business and the income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of sections 703 and 701 of the Tax Law.

C. That the petition of Estate of James Lipman is denied and Notice of Deficiency issued August 25, 1975 is sustained, together with such additional interest as may be lawfully owing.

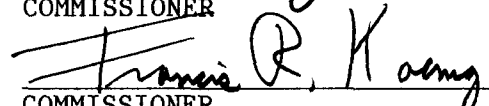
DATED: Albany, New York

MAR 14 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER