

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Sanford & Florence Shatanof :
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 1972 - 1973. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

Jean Schultz, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 29th day of February, 1980, she served the within notice of Decision by certified mail upon Sanford & Florence Shatanof, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sanford & Florence Shatanof
35 Seacoast Terrace
Brooklyn, NY

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
29th day of February, 1980.

Jean Schultz

Joanne Knapp

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

February 29, 1980

Sanford & Florence Shatanof
35 Seacoast Terrace
Brooklyn, NY

Dear Mr. & Mrs. Shatanof:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
SANFORD SHATANOF and FLORENCE SHATANOF	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1972 and 1973.	:	

Petitioners, Sanford Shatanof and Florence Shatanof, 35 Seacoast Terrace, Brooklyn, New York 11235, 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 1972 and 1973 (File No. 18167).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 9, 1979 at 10:45 A.M. Petitioners appeared pro se. The Audit Division appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUE

Whether petitioner Florence Shatanof was a bona fide employee of petitioner Sanford Shatanof's business, and if so, what was the compensation actually paid to her.

FINDINGS OF FACT

1. Petitioners, Sanford Shatanof and Florence Shatanof, timely filed separate New York State income tax returns on a combined form IT-208 for 1972 and 1973. On these returns petitioners divided equally business income from an insurance brokerage business. Petitioners did not file unincorporated business tax returns for 1972 and 1973.

2. On audit, the Audit Division found petitioner, Sanford Shatanof's business activities subject to unincorporated business tax. The Division also disallowed as an expense, the wages paid petitioner's wife Florence Shatanof. Accordingly, on March 28, 1977, the Division issued a Notice of Deficiency against Sanford Shatanof and Florence Shatanof in the amount of \$527.21 for unincorporated business tax, plus penalty of \$229.17, (pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law) and interest of \$137.93, for a total due of \$894.31.

3. Petitioner Sanford Shatanof operated an unincorporated business engaged in insurance, real estate, real estate management and bookkeeping service. The business was located at 524 Brighton Beach Avenue, Brooklyn, New York. During these years, petitioner Florence Shatanof performed office and clerical duties for her husband's business. For performing this service, petitioners contended that she was to receive fifty percent of what was reported from his insurance business and twenty-five percent of what was reported from his bookkeeping service business.

4. Petitioner Sanford Shatanof's Federal Schedule C (Profit (or Loss) From Business or Profession) showed no wages or commission paid to his wife. With respect to the alleged salary, there were no deductions and no payments for unemployment insurance, workmen's compensation or disability benefits nor were State or Federal income taxes withheld.

5. Petitioner Sanford Shatanof introduced into evidence cancelled checks paid to the order of cash which he contended represented the commission or wages paid to his wife. These checks were endorsed by Florence Shatanof, however they were not systematic or regular in the manner of a payroll check.

6. Petitioner Florence Shatanof did not conduct an unincorporated business nor was she a partner in the business activities carried on by petitioner Sanford Shatanof.

CONCLUSIONS OF LAW

A. That there is no doubt that the work of Florence Shatanof was helpful to Sanford Shatanof. However, in order to secure a deduction for employee salary, a certain amount of compliance with everyday business practice is required. The evidence of bona fide employment or the sharing of property by a married couple as opposed to a joint venture is not convincing. Additionally, the failure to pay or deduct for unemployment insurance, workmen's compensation, disability benefits, Federal and State withholding of income tax indicate that there was no employment.

B. That petitioner Florence Shatanof was not liable for unincorporated business tax for the years at issue. Accordingly, the Audit Division is directed to delete her name from the Notice of Deficiency issued March 28, 1977.

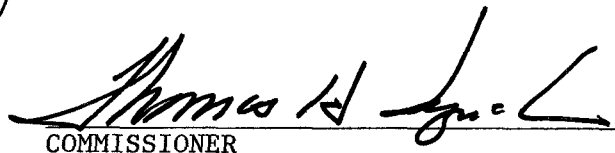
C. That the petition of Sanford Shatanof and Florence Shatanof is granted to the extent indicated in Conclusion of Law "B"; and that, except as so granted, the petition is in all other respects denied and the Notice of Deficiency, as modified, is sustained together with such additional interest and penalty as may be lawfully owing.

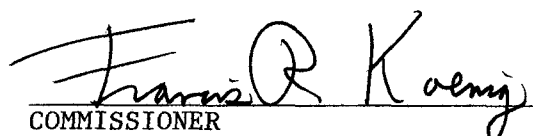
DATED: Albany, New York

FEB 29 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER