

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM SUTTON	:	DECISION
for Redtermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1971,	:	
1972 and 1973.	:	

Petitioner, William Sutton, 110 Ivy Lane, Syracuse, New York 13219, 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 1971, 1972 and 1973 (File No. 16774).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 333 East Washington Street, Syracuse, New York, on March 21, 1980 at 10:45 A.M. Petitioner William Sutton appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul A. Lefebvre, Esq., of counsel).

ISSUE

Whether the income derived from petitioner William Sutton's activities for the year 1971, 1972 and 1973 as a manufacturer's representative with The Chase-Shawmut Company, was subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, William Sutton and his wife Doris Sutton, filed New York State combined income tax returns for the years 1971 through 1973. Petitioner, William Sutton, did not file unincorporated business tax returns for said years.

2. On June 28, 1976, the Audit Division issued a Notice of Deficiency against petitioner, William Sutton, on the grounds that his activities as a manufacturer's representative constituted the carrying on of an unincorporated business for the years 1971 through 1973. It set forth a deficiency in the amount of \$1,558.43 in unincorporated business tax, plus interest of \$353.82, for a total of \$1,912.30.

3. Petitioner, William Sutton, was a manufacturer's representative for The Chase-Shawmut Company (hereinafter Chase), a manufacturer of fuses. He solicited accounts within New York State except that portion south of the northern boundaries of Rockland and Westchester counties. Although petitioner's territory was restricted to said region by Chase, his principal neither limited nor controlled which accounts petitioner could pursue within that area. Petitioner was permitted to sell only Chase's line of goods. Chase reserved the right to establish rules and sales quotas as to the petitioners assigned territory.

4. Petitioner, William Sutton, solicited all orders in the name of The Chase-Shawmut Company only. All sales orders were drawn at prices determined by Chase and subject to the acceptance by said principal. All billing invoices for the principal's products are made only in the name of The Chase-Shawmut Company.

5. The Chase-Shawmut Company determined the petitioner's rate on sales of various goods and Chase specifically reserved the right to modify said rates from time to time upon thirty days' written notice to the petitioner. The Chase-Shawmut Company charged the petitioners commission account for all uncollectable accounts receivable. Federal and New York income taxes and social security taxes were not withheld from petitioner's income by The Chase-Shawmut Company.

6. Business expense (such as office supplies, travel, entertainment and other miscellaneous costs) were paid for by petitioner, William Sutton, without reimbursement from The Chase-Shawmut Company. Petitioner filed a Federal Schedule C (Profit or Loss From Business or Profession). He maintained an office in his New York home where he also had an answering service. The petitioner's business cards and stationery read "Chase-Shawmut Company - William Sutton".

7. Petitioner, William Sutton, was provided no company benefits such as pension plan, medical and dental benefits during the years at issue.

8. Petitioner's principal was interested only in the results obtained from his sales activities. It did not exercise direction or control over the sales techniques or methods he used in obtaining such results. Petitioner was free to employ assistants during the years at issue, but did not.

CONCLUSIONS OF LAW

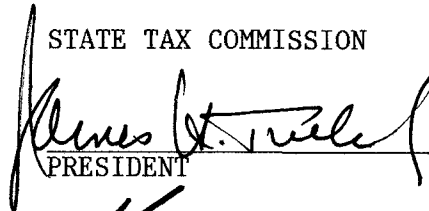
A. That petitioner, William Sutton's, activities on behalf of The Chase-Shawmut Company during the years 1971, 1972 and 1973 constituted the carrying on of a sales business as an independent contractor, within the meaning and intent of section 703(b) of the Tax Law, since said firm failed to exercise sufficient direction and control over petitioner's sales activities so as to result in an employee-employer relationship. Therefore, the income derived from petitioner's sales activities on behalf of The Chase-Shawmut Company during the years at issue was subject to unincorporated business tax.

B. That the petition of William Sutton is denied and the Notice of Deficiency issued June 28, 1976 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

SEP 19 1980

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

William Sutton :

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 1971,1972,1973. :

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 19th day of September, 1980, he served the within notice of Decision by certified mail upon William Sutton, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

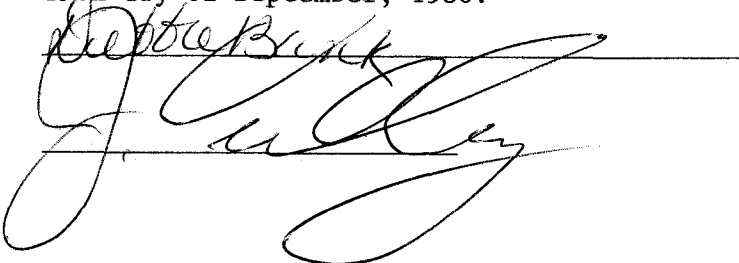
William Sutton
110 Ivy Ln.
Syracuse, NY 13219

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

19th day of September, 1980.

A large, stylized handwritten signature in dark ink, likely belonging to Jay Vredenburg, is written over a horizontal line. The signature is fluid and cursive, with the first letter being a large capital 'J'.

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

September 19, 1980

William Sutton
110 Ivy Ln.
Syracuse, NY 13219

Dear Mr. Sutton:

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