

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of
Lawrence & Joan Sydelman :
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 Year 1973. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

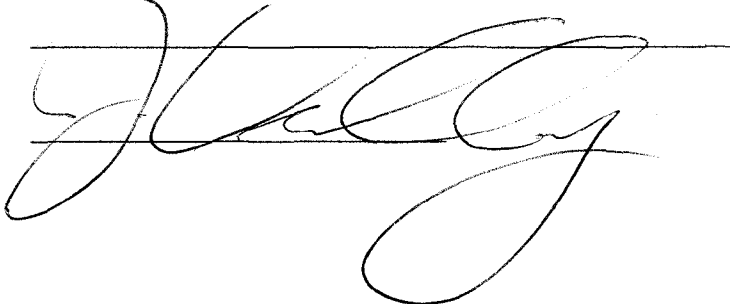
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Lawrence & Joan Sydelman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Lawrence & Joan Sydelman
2605 Hubbard St.
Brooklyn, NY 11235

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 a large loop at the end.

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

September 19, 1980

Lawrence & Joan Sydelman
2605 Hubbard St.
Brooklyn, NY 11235

Dear Mr. & Mrs. Sydelman:

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	:	
	:	
LAWRENCE SYDELMAN and JOAN SYDELMAN	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Year 1973.	:	

Petitioners, Lawrence Sydelman and Joan Sydelman, 2605 Hubbard Street, 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 year 1973 (File No. 18491).

A small claims hearing was held before William Valcarcel, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on January 15, 1980 at 9:15 A.M. Petitioner Lawrence Sydelman appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a salesman is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Lawrence Sydelman and Joan Sydelman, timely filed a joint New York State Income Tax Resident Return for the year 1973, on which commission income of \$33,426.49 and employee business expenses of \$15,292.91 was reported from the selling activities of petitioner Lawrence Sydelman.

Petitioner Lawrence Sydelman did not file an unincorporated business tax return for the year 1973.

2. On January 4, 1977, the Audit Division received a written reply to its previous inquiry, on which petitioner's tax preparer indicated, in part:

- (a) that petitioner was a manufacturer's representative selling women's apparel.
- (b) that petitioner earned commission income from two principals, "My Things of California" (\$31,000.00) and "Taste of Honey California" (\$2,426.49).
- (c) that petitioner's principals exercised "no supervision".
- (d) that there was "no control of time or effort by principals," and
- (e) that petitioner was free to work for, or represent other principals.

3. Based on information given on the written reply (Finding of Fact "2", supra), the Audit Division issued a Notice of Deficiency on March 28, 1977, in the sum of \$601.67 plus interest, along with an explanatory Statement of Audit Changes, on which petitioner's net commission income (gross commission income minus employee business expense) was held subject to the unincorporated business tax. Also, an additional personal income tax was imposed based on unreported Federal audit changes. The additional personal income tax was conceded and is not at issue.

4. Petitioner Lawrence Sydelman was a salesman and contended that he solely represented "My Things of California", and its subsidiary "A Taste of Honey of California" (the principals). He was compensated on a commission basis, with no withholding of payroll taxes and no reimbursement of selling expenses. Petitioner paid self-employment taxes on net commissions (limited to \$10,800.00) earned during the year 1973.

5. The principals petitioner represented were located in the State of California and maintained no offices in New York State. Petitioner conducted his selling activities from his home in the City and State of New York.

6. Petitioner Lawrence Sydelman was forbidden by his principals from representing other firms, and was restricted to selling in the States of New York and New Jersey.

7. Although petitioner was required to periodically report the result of his selling activities to his principals in California, his principals did not exercise any control over his day-to-day sales endeavors, nor did they regulate the manner in which he attempted to solicit business. However, petitioner argued that his time and efforts were regulated by his principals through telephone calls.

8. Petitioner followed his own itinerary from leads, usually provided by his principals. Occasionally, he was required to service "house" accounts for which he was not compensated.

CONCLUSIONS OF LAW

A. That the degree of direction and control exercised by "My Things of California" and/or by "A Taste of Honey of California" was not sufficient so as to cause petitioner Lawrence Sydelman to become their employee in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the selling activities of petitioner Lawrence Sydelman during the year 1973 constituted the carrying on of an unincorporated business and the income derived therefrom is subject to the unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

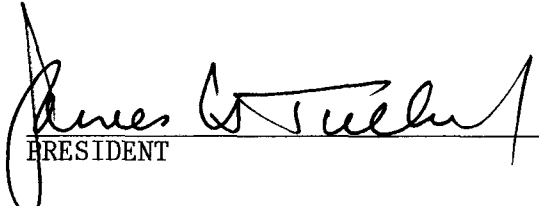
C. That the petition of Lawrence Sydelman and Joan Sydelman is denied


and the Notice of Deficiency issued March 28, 1977, is sustained together with such additional interest as may be lawfully owing.

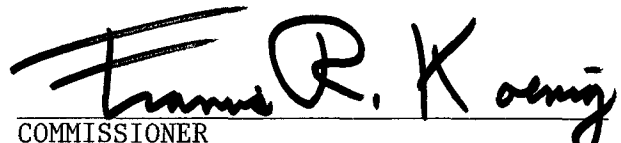
DATED: Albany, New York

STATE TAX COMMISSION

SEP 19 1980


PRESIDENT


COMMISSIONER


COMMISSIONER