

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :  
of  
William A. Van Siclen :

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 1970 -1973. :

AFFIDAVIT OF MAILING

State of New York  
County of Albany

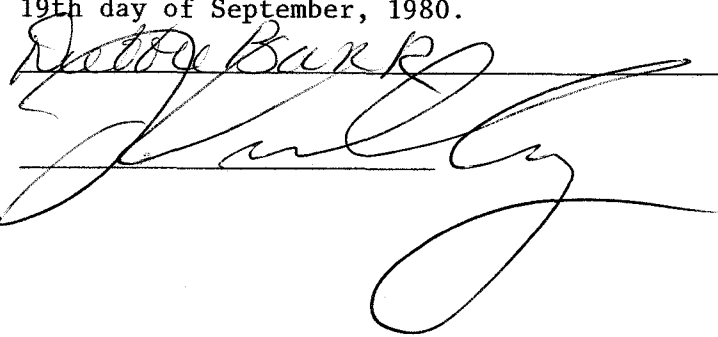
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon William A. Van Siclen, the petitioner in the within proceeding,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

William A. Van Siclen  
32-24 214th St.  
Bayside, NY 11361

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.

  
Notary Public

STATE OF NEW YORK  
STATE TAX COMMISSION

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of  
William A. Van Siclen :

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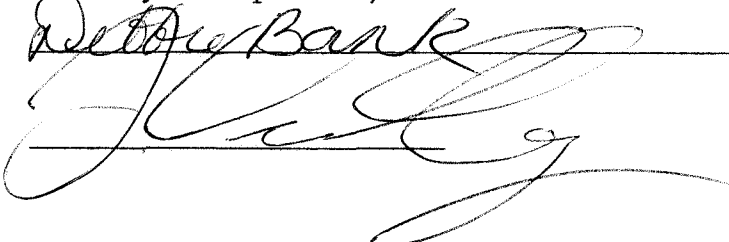
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 19th day of September, 1980, he served the within notice of Decision by certified mail upon Philip E. Lieberman the representative of the petitioner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

Mr. Philip E. Lieberman  
100 Merrick Rd.  
Rockville Centre, NY 11570

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  
19th day of September, 1980.

  
Notary Public

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

September 19, 1980

William A. Van Siclen  
32-24 214th St.  
Bayside, NY 11361

Dear Mr. Van Siclen:

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  
Philip E. Lieberman  
100 Merrick Rd.  
Rockville Centre, NY 11570  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
WILLIAM A. VAN SICLEN	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1970,	:	
1971, 1972 and 1973.	:	

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Petitioner, William A. Van Siclen, 32-24 214th Street, Bayside, New York 11361, 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 1970, 1971, 1972 and 1973 (File No. 17854).

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 November 29, 1979 at 1:15 P.M. Petitioner appeared by Philip E. Lieberman, CPA. The Audit Division appeared by Ralph J. Vecchio, Esq. (Paul Lefebvre, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a salesman during the years 1970, 1971, 1972 and 1973 is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, William A. Van Siclen, and Doris L. Van Siclen, his wife, filed New York State combined income tax resident returns for the years 1970, 1971, 1972 and 1973, on which petitioner reported net business income from his activities as a salesman. Petitioner did not file unincorporated business tax returns for the years 1970, 1971, 1972 and 1973.



2. On January 24, 1977, the Audit Division issued a Notice of Deficiency against petitioner imposing a tax of \$2,046.66 plus interest on the grounds that the income derived from petitioner's activities during the years 1970, 1971, 1972 and 1973 was subject to the unincorporated business tax.

3. Petitioner, William A. Van Siclen, was a salesman of office supplies during the years 1970, 1971, 1972 and 1973 representing Ketcham and McDougall, Inc., and "a number of other firms". All of petitioner's principals compensated him on a commission basis with no withholding of payroll taxes and no reimbursements of selling expenses.

4. Petitioner contended that the products sold for each firm were non-competitive, and were usually sold simultaneously to the same customers.

5. Other than a generalized letter from Ketcham and McDougall, Inc., no documentary evidence and no oral testimony from petitioner, was submitted detailing the degree of direction and control imposed by any of the firms he represented.

#### CONCLUSIONS OF LAW

A. That sufficient direction and control was not imposed by Ketcham and McDougall, Inc., or any of petitioner's other principals, so as to cause petitioner, William A. Van Siclen, to become their employee, within the meaning and intent of section 703(b) of the Tax Law.

B. That the income derived from petitioner's activities as a salesman during the years 1970, 1971, 1972 and 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 William A. Van Siclen is denied and the Notice of Deficiency issued January 24, 1977 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



*[Faint, illegible handwritten text]*

SEP 1 9 1980