

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :

of

Jack M. & Ruth Zatlou :

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 - 1970. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Jack M. & Ruth Zatlou, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

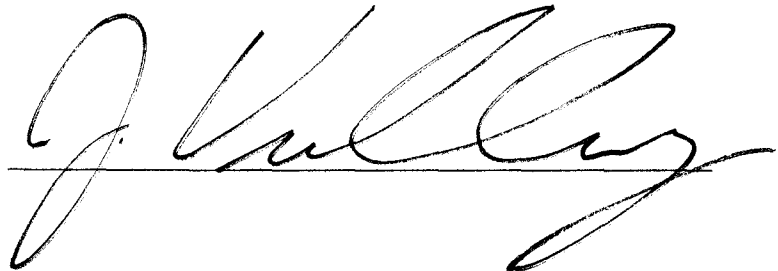
Jack M. & Ruth Zatlou
13900 W. Tahiti Way
Marina Del Ray, CA 90291

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
23rd day of May, 1980.

Joanne Knapp



STATE OF NEW YORK
STATE TAX COMMISSION

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for Redetermination of a Deficiency or a Revision :

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Unincorporated Business Tax :

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for the Years 1968 - 1970. :

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 23rd day of May, 1980, he served the within notice of Decision by certified mail upon Norman R. Berkowitz 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. Norman R. Berkowitz
666 Fifth Ave.
New York, NY 10019

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
23rd day of May, 1980.

Joanne Krapp

J. Vredenburg

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

May 23, 1980

Jack M. & Ruth Zatlow
13900 W. Tahiti Way
Marina Del Ray, CA 90291

Dear Mr. & Mrs. Zatlow:

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
Norman R. Berkowitz
666 Fifth Ave.
New York, NY 10019
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACK M. ZATLOW and RUTH ZATLOW	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1968, 1969 and 1970.	:	

Petitioners, Jack M. Zatlow and Ruth Zatlow, 13900 West Tahiti Way, Marina Del Ray, California 90291, 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 1968, 1969 and 1970 (File No. 13481).

A small claims hearing was held before Allen Caplowaith, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on November 26, 1979 at 9:15 A.M. Petitioners appeared by Norman R. Berkowitz, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Frank Levitt, Esq., of counsel).

ISSUES

I. Whether petitioner Jack M. Zatlow's sales activities during the years 1968, 1969 and 1970 constituted the carrying on of an unincorporated business of which the income derived therefrom is subject to the imposition of unincorporated business tax.

II. Whether said income, if subject to the imposition of unincorporated business tax, should be properly allocated to sources within and without New York State.

III. Whether said income, if subject to the imposition of unincorporated business tax, should be properly reduced by charitable contributions in computing net income from the business.

FINDINGS OF FACT

1. Petitioners, Jack M. Zatlow and Ruth Zatlow, timely filed New York State joint income tax resident returns for the years 1968 and 1969. For the year 1970, they timely filed a New York State Combined Income Tax Return. They did not file unincorporated business tax returns for any of said years at issue.

2. On December 16, 1971, the Income Tax Bureau issued a Statement of Audit Changes wherein, as the result of his reply to an inquiry letter, it held petitioner Jack M. Zatlow's reported business income for the years 1968, 1969 and 1970 subject to unincorporated business tax. Accordingly, a Notice of Deficiency was issued against the petitioners on June 26, 1972 asserting unincorporated business tax of \$2,449.46, plus interest of \$323.17, for a total due of \$2,772.63.

3. During the years 1968 and 1969, the only earned income reported on petitioners' returns was business income derived from Jack M. Zatlow's activities as a "sales representative". For the year 1970, in addition to Mr. Zatlow's business income, Ruth Zatlow reported wage income derived from services rendered as a clerk.

4. During the years at issue, Jack M. Zatlow (hereinafter petitioner) was a salesman of ladies' sportswear. His territory consisted of eleven western states.

5. Petitioner contended that he was an employee during the years at issue since his principals directed pricing and the assignment of territories.

He further contended that other indicia of his employee status were that he did not maintain an office and that he did not employ assistants.

6. During each of the years at issue, petitioner represented at least six companies. He contended that several of the companies were controlled by the same principals, but he did not submit documentary evidence to support this contention.

7. Petitioner contended that his principals withheld income taxes and social security from his earnings, but review of his New York State returns disclosed that no New York State income taxes were withheld.

8. Petitioner was not reimbursed for any of his ordinary and necessary business expenses.

9. Petitioners' Federal Schedules C, filed for each of the years at issue, revealed expense deductions claimed for signs, advertisements and commissions paid to other salesmen. Petitioner used part of his home as an office, and rented a showroom at 1407 Broadway, New York, New York during all of 1968 and part of 1969.

10. Petitioner contended that he traveled to the West Coast approximately four times each year. He claimed that since no office space was provided, he rented a motel room which he used as a showroom during each trip.

11. Petitioner contended that if it is determined that the income derived from his sales activities is subject to the imposition of unincorporated business tax, he would properly be entitled to allocate such income to sources within and without New York State on the basis that the motel rooms qualify as a regular place of business. Also, he contended that he is properly entitled to a deduction during each year at issue for charitable contributions.

12. Petitioner made charitable contributions during the years at issue as reported on his personal income tax returns as follows: \$305.50 for 1968, \$556.00 for 1969 and \$577.00 for 1970.

13. No evidence was submitted pertaining to the degree of direction and control exercised by petitioner's principals over his daily activities or how petitioner divided his time and effort devoted to such principals.

CONCLUSIONS OF LAW

A. That an employee is an individual who performs services for an employer under an employer-employee relationship. The evidence submitted, coupled with the fact that the record is void with respect to the degree, if any, of direction and control exercised by petitioner's principals over his daily activities, leads to the conclusion that petitioner did not perform services for any of his principals under a bona fide employer-employee relationship. As such, petitioner was an independent businessman and was not an employee during the years at issue in accordance with the meaning and intent of section 703(b) of the Tax Law. Accordingly, the income derived from his sales activities during the years 1968, 1969 and 1970 is subject to the imposition of unincorporated business tax within the meaning and intent of section 701 of the Tax Law.

B. That the various motel rooms used by the petitioner were used with no degree of regularity or permanence and, therefore, they cannot be considered a regular place of business outside the State. Accordingly, petitioner's income derived from his sales activities is deemed to have been derived from carrying on his business entirely within the State of New York within the meaning and intent of section 707(a) of the Tax Law.

C. That petitioner's total income from business should be properly reduced by charitable contributions of the following amounts within the meaning

and intent of section 706(1) of the Tax Law: \$305.50 for 1968, \$556.00 for 1969 and \$577.00 for 1970.

D. That petitioner Ruth Zatlow's name should be removed from the Notice of Deficiency dated June 26, 1972 since during the years at issue she was not engaged in any unincorporated business activities.

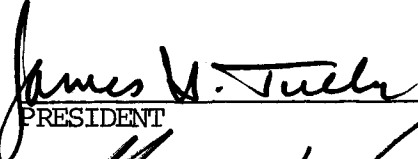

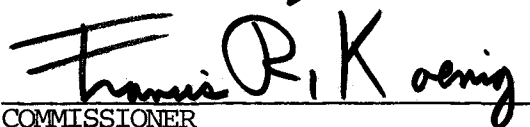
E. That the petition of Jack M. Zatlow and Ruth Zatlow is granted to the extent provided in Conclusions of Law "C" and "D", supra, and that in all other respects said petition is denied.

F. That the Audit Division is hereby directed to modify the Notice of Deficiency dated June 26, 1972 to be consistent with the Decision rendered herein.

DATED: Albany, New York

MAY 23 1980

STATE TAX COMMISSION


PRESIDENT

COMMISSIONER

COMMISSIONER