

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Sidney Levenson (Est. of) :

: 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 - 1972 :

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 1st day of May, 1981, he served the within notice of Decision by certified mail upon Arthur N. Read 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. Arthur N. Read
Eisner, Levy, Steel & Bellman, P.C.
351 Broadway
New York, NY 10013

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
1st day of May, 1981.

Connie A. Hagelland

J. Vredenburg

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

May 1, 1981

Sidney Levenson (Est. of)
15-42 Bell Blvd.
Bayside, NY 11360

To the Executors:

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
Arthur N. Read
Eisner, Levy, Steel & Bellman, P.C.
351 Broadway
New York, NY 10013
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ESTATE OF SIDNEY LEBENSON	:	DECISION
	:	
for Redetermination of Deficiencies or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Years 1968 through 1972.	:	

Petitioner, Estate of Sidney Levenson, 15-42 Bell Boulevard, Bayside, New York 11360, filed a petition for redetermination of deficiencies or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1968 through 1972 (File No. 12201).

A formal hearing was held before Archibald Robertson, Hearing Officer, on November 2, 1978 and continued before Julius E. Braun, Hearing Officer, on January 23, 1979, at the offices of the State Tax Commission, Two World Trade Center, New York, New York. Petitioners appeared by Eisner, Levy, Steel & Bellman, P.C. (Arthur N. Read, Esq., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Aliza Schwadron, Irving Atkins and Samuel Freund, Esqs., of counsel).

ISSUES

I. Whether the notices of deficiency issued against Sidney Levenson were timely.

II. Whether the income received by Sidney Levenson during the years in issue was derived from services performed by him as an employee, or whether said income was derived from the carrying on of an unincorporated business, thereby making it subject to unincorporated business tax.

FINDINGS OF FACT

1. On April 11, 1975, the Audit Division issued two Statements of Audit

Changes against the Estate of Sidney Lebenson on the grounds that the business activities reported by Sidney Lebenson constituted the carrying on of an unincorporated business subject to unincorporated business tax. Accordingly, a Notice of Deficiency for the years 1968, 1969 and 1970 was issued in the amount of \$1,123.81, plus interest and a Notice of Deficiency for the years 1971 and 1972 was issued in the amount of \$720.06, plus interest.

2. Sidney Lebenson and his wife, Esther Lebenson, timely filed New York State combined income tax returns for 1968 through 1971. The 1972 combined return was received on June 14, 1973. Sidney Lebenson did not file any unincorporated business tax returns for the years 1968 through 1972.

3. During the years in issue, Sidney Lebenson was a wholesale ladies' apparel sales representative and member of the Guild of National Association of Women's and Children's Apparel Salesmen. From 1964 until his death in May, 1973, he represented manufacturers of ladies' sportswear. His contract with the Dormont Knitwear Sales Corporation, which represented the Jane Colby line of clothes, provided that he would devote at least 50 percent of his working time to the sale of the corporation's products and did not restrict his dealing or selling products of other manufacturers as long as the lines did not reduce his time or were in competition with the corporation's products. A consent in writing was required to represent any new lines. Territorial rights were designated for him in the specialty shops of the five boroughs of New York City, Long Island and Westchester County. He had a weekly draw of \$200.00 and was paid commission of six percent of the net amount of all shipments made to customers. His proficiency in selling and conduct were subject to the direction and supervision of a sales manager. He was provided with group life insurance.

4. U.S. Information Returns (Federal Form 1099) issued to Sidney Lebenson for 1968, indicated that he received commissions of \$20,673.99 from the Dormont

Knitwear Sales Corp. and \$2,908.01 from Wear-Abouts of Boston, Inc. In 1969, commissions from Jane Colby - Division of U.S. Industries, Inc. were \$19,016.37 and from Wear-Abouts of Boston, Inc. of \$6,982.19, in 1970, \$21,236.93 and \$8,380.84 respectively. In 1971 and 1972 Mr. Levenson represented Casual Sportswear, Inc. Commissions for 1971 were \$21,613.85 from Jane Colby - Division of U.S. Industries, Inc., \$8,493.34 from Wear-Abouts of Boston, Inc. and \$58.20 from Casual Sportswear, Inc. In 1972, commissions from said firms were \$19,282.29, \$10,445.67 and \$797.17 respectively.

5. During the years in issue, Sidney Levenson filed Federal Schedule C "Profit (or Loss) From Business or Profession" wherein he deducted his business expenses including depreciation of his automobile, insurance, advertisement, organization dues, samples, business gifts, luncheons, entertainment, tips, tolls, telephone. He stated in 1968 on his Schedule C, in the way of explanation of business expenses, that he "was an independent salesman covering New York, New Jersey, Nassau, Suffolk and Westchester Counties. All expenses incurred in my business are paid by myself and I am not reimbursed by any of my suppliers." He also filed and paid his own social security self-employment tax (Schedule C-3).

6. On March 25, 1969, Sidney Levenson, in answer to an inquiry, advised the State Income Tax Bureau that he "was an independent salesman covering New York, New Jersey, Suffolk, Nassau County and Westchester. All expenses are paid by myself and I am not reimbursed by any of my suppliers." He was asked to explain the nature and extent of supervision and control that the principals exercised over his sales activities. He replied, "None. They just supply the line. No control whatsoever and no supervision."

7. Esther Levenson testified hesitatingly regarding her deceased husband's business activities. She was not interested in his business and the only time

it was discussed was when he was aggravated.

8. Proposed Findings of Fact were submitted by petitioner's representative. Only the following are controverted by documentary or other substantial evidence:

I. Procedural, ¶ 1 and 7, II. Relationship to Principal, ¶ 6, 9, 10, 11, 12, 13, 14, 20 and 21.

CONCLUSIONS OF LAW

A. That the income received by Sidney Levenson during the years 1968 through 1972 from his suppliers constituted income derived from the carrying on of an unincorporated business as defined in section 703(a) of the Tax Law and not services performed in the capacity of an employee within the meaning and intent of section 703(b) of the Tax Law. Jerry Bander v. State Tax Commission, 65 A.D.2d 847.

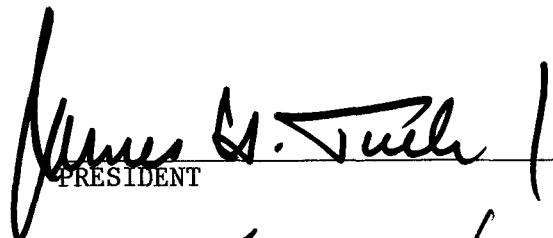
B. That the notices of deficiency issued on April 11, 1975 to the Estate of Sidney Levenson were timely in accordance with sections 722 and 683(c)(1)(A) of the Tax Law.

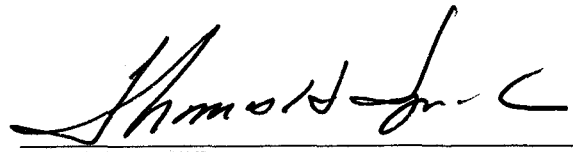
C. That the petition of the Estate of Sidney Levenson is denied and the Notices of Deficiency issued on April 11, 1975 are sustained.


DATED: Albany, New York

MAY 01 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER



New York State Department of
TAXATION and FINANCE
TAX APPEALS BUREAU

TO *STC* DATE *May 13, 1981*

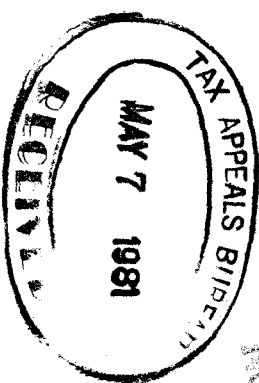
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better address.*

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

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5/8/81
Bottle for
Sidney
15-42

Sidney Levenson (Est. of)
15-42 Bell Blvd.
Bayside, NY 11360



NOT RECORDED

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

May 1, 1981

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15-42 Bell Blvd.
Bayside, NY 11360

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Phone # (518) 457-6240

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
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Eisner, Levy, Steel & Bellman, P.C.
351 Broadway
New York, NY 10013
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
ESTATE OF SIDNEY LEBENSON
for Redetermination of Deficiencies or
for Refund of Unincorporated Business Tax :
under Article 23 of the Tax Law for the
Years 1968 through 1972. :

DECISION

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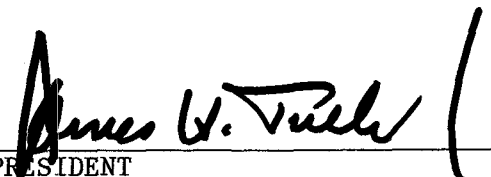
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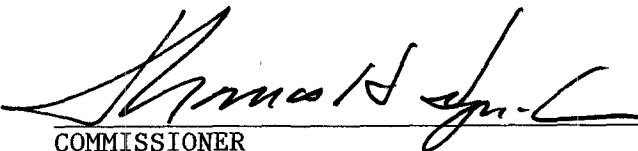
C. That the petition of the Estate of Sidney Lebenson is denied and the Notices of Deficiency issued on April 11, 1975 are sustained.


DATED: Albany, New York

MAY 01 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER