

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of  
Gerald Levine

:

:

: 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 1973 - 1975.

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 June, 1981, he served the within notice of Decision by certified mail upon Gerald Levine, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Gerald Levine  
130 Overlook Ave., Apt. #8B  
Hackensack, NJ 07601

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 June, 1981.

*Conna H. Hagelund*

*J. Vredenburg*

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

June 19, 1981

Gerald Levine  
130 Overlook Ave., Apt. #8B  
Hackensack, NJ 07601

Dear Mr. Levine:

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 TAX COMMISSION

A small claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, State Campus, Building 9, Albany, New York, on January 8, 1981 at 2:45 P.M. Petitioner, Gerald Levine, appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Kevin Cahill and Michael Alexander, Esqs., of counsel).

## ISSUES

I. Whether services rendered by petitioner, Gerald Levine, to the Professional Bowlers Association, Inc., constitutes the carrying on of an unincorporated business, the income from which is subject to the imposition of unincorporated business tax for the years 1973, 1974 and 1975.

II. If petitioner is subject to unincorporated business tax, whether his failure to file unincorporated business tax returns for the years in issue is due to reasonable cause.

FINDINGS OF FACT

1. Petitioner, Gerald Levine, and Mildred Levine, his wife, filed New York State combined income tax returns for the years in issue. Petitioner Gerald Levine, did not file unincorporated business tax returns for said years.

2. On March 16, 1979, the Audit Division issued a Notice of Deficiency against petitioner asserting unincorporated business tax of \$1,072.79 plus section 685, subdivision (a)(1) and (a)(2) penalties and interest, for a total of \$1,678.98. The Notice of Deficiency was based on a Statement of Audit Changes, dated May 25, 1977, which held that petitioner's income from public relations is subject to unincorporated business tax.

3. For the years at issue, petitioner worked under a written agreement for the Professional Bowlers Association, Inc. (hereinafter "corporation")

The agreement provided, in relevant part, that:

"Agreement made at Akron, Ohio this 12th Day of July, 1971  
by and between the Professional Bowlers Association, Inc.  
(Inc.), ..... and Gerald E. Levine, an independent contractor .....

For the sum of nineteen thousand dollars (\$19,000.00) per year, to be paid on a weekly basis, Gerald E. Levine will perform such publicity, promotional and administrative functions, on a full time basis, as directed by the executive director, or his designated agent, of the Professional Bowlers Association...."

4. The nature of the business required petitioner to travel extensively throughout the United States to attend bowling tournaments arranged and conducted by the corporation. He spent approximately twenty eight (28) weeks of the year, traveling with other individuals who worked under similar agreements with the corporation. The group was accompanied by, and under the immediate control of a tournament director.

5. Petitioner's principal function at the tournament was to generate pre and post bowling publicity for the professional bowlers and the owners of the lanes so as to encourage public interest in the event. To achieve this result, petitioner arranged meetings with newspapermen, wrote a minimum of four (4) publicity stories daily which he submitted to the Associated Press and the United Press and counseled local newspaper reporters who lacked experience covering professional bowling tournaments by offering suggestions on how to best write their stories.

6. Petitioner was also required by the corporation to be present at the bowling lanes prior to the arrival of the professional bowlers and the audience to assure that all was in readiness for the tournament. He was also required to resolve problems that developed between the professional bowlers and the bowling lane owners and to remain at the bowling lanes until the day's activities were concluded.

7. The selection of bowling tournaments to be visited and the timing of the visits was made for the petitioner by the corporation.

8. Petitioner's travel expenses to the various bowling tournaments was paid for by the corporation. The petitioner, while traveling, also received a per diem allowance of \$30.00 to cover food and lodging expenses.

9. The remainder of the year of approximately twenty-four (24) weeks, when petitioner was not assigned to bowling tournaments, was spent both at the corporate offices in Akron, Ohio, or at the office maintained in petitioner's home in Forest Hills, New York.

Petitioner spent approximately fourteen (14) of the twenty-four (24) weeks at the corporate offices, where he was engaged in preparing various publicity for the corporation.

For the balance of the year, petitioner worked from the office maintained in his home. The work done at said office involved seeking publicity from the various television and radio networks whom the corporation deemed failed to give adequate publicity to its prior bowling tournaments. Petitioner sought to rectify the situation by meeting with various staff members of the networks in an effort to stimulate publicity required by the corporation.

The petitioner was not reimbursed by the corporation for any expenses incurred by him while working at his home.

10. The corporation did not withhold Federal income taxes, New York State income taxes or social security taxes from petitioner's compensation.

11. Petitioner filed Federal Forms 1040, Schedule C, for years at issue and claimed his business expenses. On this form he listed his principal business activity as public relations.

12. Petitioner for subject years was not employed by nor rendered services to any principal other than said corporation.

#### CONCLUSIONS OF LAW

A. That the publicity, promotional and administrative functions performed by petitioner for subject years constituted the performance of services rendered as an employee in accordance with the meaning and intent of section 703(b) of the Tax Law. That the income earned by petitioner, Gerald Levine, from the corporation for subject years was derived as an employee and, therefore, such income is not subject to unincorporated business tax.

B. That petitioner, Gerald Levine, is not subject to section 685, subdivision (a)(1) and (a)(2) penalty as he was not engaged in an unincorporated business in accordance with Conclusion of Law "A".

C. That the petition of Gerald Levine is granted and the Notice of Deficiency issued on March 16, 1979 is cancelled.

DATED: Albany, New York

JUN 19 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER