

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Klaus W. Moses

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 20th day of November, 1981, he served the within notice of Decision by certified mail upon Klaus W. Moses, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Klaus W. Moses
5 The Dogwoods
Roslyn Estates, NY 11576

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
20th day of November, 1981.

Annie G. Hagelund

J. Vredenburg

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

November 20, 1981

Klaus W. Moses
5 The Dogwoods
Roslyn Estates, NY 11576

Dear Mr. Moses:

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	:	
KLAUS W. MOSES	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1968	:	
through 1970.	:	

Petitioner, Klaus W. Moses, 5 The Dogwoods, Roslyn Estates, New York 11576, 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. 13853).

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 August 25, 1978 at 10:45 A.M. The petitioner appeared pro se. The Income Tax Bureau appeared by Peter Crotty, Esq. (Bruce Zalaman, Esq., of counsel).

ISSUE

Whether compensation received by petitioner during the years 1968 through 1970 is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Klaus W. Moses, and his wife, Marion Moses, timely filed joint New York State income tax resident returns for the years 1968 through 1970. Therein, petitioner reported net business income from activities, which were labeled "consulting". Petitioner did not file unincorporated business tax returns for these years.

2. On May 22, 1972, the Income Tax Bureau issued a Notice of Deficiency, in the sum of \$3,056.63, holding that the income from his business activities as a consultant during the years 1968 through 1970 were subject to unincorporated business tax.

3. Petitioner, Klaus W. Moses, is an accountant with a bachelors degree in accounting, and a masters degree in management, both from New York University.

4. Petitioner was employed by the Allied Chemical Corp. and was subsequently hired by National Industries, Inc. ("National"), as their vice president during the early part of 1968. On May 1, 1968, petitioner was granted a stock option for joining the firm, allowing him to purchase 5000 shares of common stock of National for \$95,000.00. During the latter part of 1968, National informed petitioner that his employment would be terminated on December 31, 1968. In order to restrain petitioner from exercising the aforementioned stock option, National paid him \$35,000.00 to cancel the stock option agreement. In addition, National agreed to pay petitioner \$27,000.00 in 1969, and \$9,000.00 in 1970 in the form of consultant fees in lieu of severance pay. However, he was not required, nor expected, to render services of any type for this compensation.

5. Petitioner contends that the \$35,000.00 paid to him to cancel the stock option agreement was erroneously reported as business income on his tax return for the year 1968, as well as employee business expenses attributed to his salary income.

6. On April 7, 1969, petitioner was hired by Seilon, Inc. as their vice president of financial services. Petitioner quickly became dissatisfied with his new employer and resigned on April 14, 1969. Seilon, Inc. paid petitioner \$1,107.68 for services rendered during his brief period of employment. Sub-

sequently, petitioner was employed by Simplex Lock Corp. for a short period in 1969.

7. Petitioner contended that the \$27,000.00 in severance pay paid by National, and the \$1,107.68 in wages paid by Seilon, Inc., were erroneously reported as business income on his tax return for the year 1969, as well as employee business expenses attributed to his salary income.

8. On February 21, 1969, petitioner signed a written agreement with G and G Leasing Corporation, which later became known as Weston Leasing Company ("Weston"). This agreement, which designated him as an employee in an executive capacity, was for a three year period, whereby petitioner was required to be available for advice and consultation when such services were needed by Weston. Although petitioner was not required to render services on a full time basis, he was forbidden from rendering services to any other concern engaged in the equipment leasing business.

9. During the year 1970, in addition to consulting services rendered to Weston, petitioner was employed as vice president of Alison International, Inc. He subsequently resigned from that position, and joined the firm of R/A Staff and Management, as their vice president and treasurer. Upon his employment with R/A Staff and Management, petitioner was notified by Weston to resign. Said notice was a letter which referred to him as an employee. In consideration for cancelling the written agreement of February 21, 1969, petitioner was granted 17,000 shares of common stock of Weston at no cost to him, but valued at \$18,785.60. This consideration was separate and apart from the regular salary paid by Weston during the year 1970 in the sum of \$11,214.40 for consulting services rendered. Said salary was reported on a wage and tax statement and Federal income taxes and social security taxes were deducted from the salary.

10. Petitioner contended that the \$9,000.00 in severance pay paid by National and the \$18,785.60 paid in common stock by Weston was erroneously reported as business income on his tax return for the year 1970, as well as employee business expenses attributed to his salary income.

CONCLUSIONS OF LAW

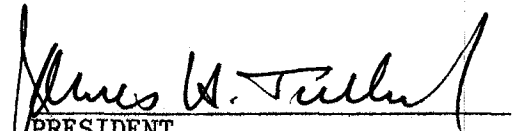
A. That the compensation paid to petitioner by National Industries, Inc., Seilon, Inc., and Weston Leasing Company during the years 1968, 1969 and 1970, was income derived from his activities as a corporate officer and employee; and, accordingly, such income is not subject to the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the petition of Klaus W. Moses is granted and the Notice of Deficiency dated May 22, 1972 is cancelled.

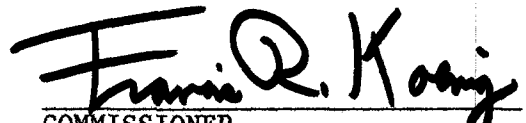
DATED: Albany, New York

NOV 20 1981

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER