

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition :

of

Sile M. Silberg :

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 Year 1973. :

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 6th day of March, 1981, he served the within notice of Decision by certified mail upon Sile M. Silberg, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Sile M. Silberg  
149-30 88th St. Apt. 3-J  
Howard Beach, NY 11414

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  
6th day of March, 1981.

*Conne A. Haglund*

*J. Vredenburg*

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

March 6, 1981

Sile M. Silberg  
149-30 88th St. Apt. 3-J  
Howard Beach, NY 11414

Dear Mr. Silberg:

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

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In the Matter of the Petition	:	
	:	
of	:	
	:	
SILE M. SILBERG	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business Tax :	:	
under Article 23 of the Tax Law for the	:	
Year 1973.	:	

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Petitioner, Sile M. Silberg, 149-30 88th Street, Apt. 3-J, Howard Beach, New York 11414, filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1973 (File No. 22508).

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 October 2, 1980 at 9:15 A.M. Petitioner appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUE

Whether petitioner's activities as a plastic flower salesman constituted the carrying on of an unincorporated business of which the income derived therefrom is subject to the imposition of unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Sile M. Silberg, timely filed a joint New York State Income Tax Resident Return with his wife, Elsie Silberg, for the year 1973 whereon he reported business income from his activities described as "sales". He did not file a New York State unincorporated business tax return for said year.

2. On January 6, 1977, the Audit Division issued a Statement of Audit Changes to petitioner wherein the income derived from his sales activities was held subject to the imposition of unincorporated business tax. Additionally, adjustments to both personal income tax and unincorporated business tax were made based on changes resulting from a Federal audit. Such adjustments were uncontested by petitioner and the resulting additional personal income taxes computed with respect to such adjustments was previously paid. Accordingly, a Notice of Deficiency was issued against petitioner on June 26, 1978 asserting additional personal income tax of \$215.80 (previously paid), unincorporated business tax of \$399.05, plus interest of \$193.55, for a total due of \$808.40.

3. Petitioner's reported business income was derived from his sales activities on behalf of the First American Flower Co. (hereinafter the company), Elmsford, New York.

4. Petitioner commenced selling plastic flowers for the company in March, 1973, and continued said activity throughout the balance of the taxable year at issue.

5. Petitioner sold plastic flowers to department stores, chain stores and discount stores. He was compensated on a 5 percent commission basis against which he received a weekly draw of \$500.00.

6. The company did not assign petitioner a specific territory, nor did it furnish petitioner with leads. Further, petitioner was not required to report to the company's office nor was he required to meet a sales quota.

7. The company did not withhold income or social security taxes from petitioner's compensation, nor did it cover petitioner for a pension plan, workmen's compensation, unemployment insurance or disability insurance.

8. Petitioner rented office space at 1133 Broadway for storage of his samples.

9. Petitioner filed a Federal Schedule C wherein he deducted expenses incurred for advertising.

10. The company did not prohibit petitioner from carrying other lines.

11. In answer to questions relating to the degree of direction and control exercised by the company over his sales activities, petitioner stated that "everything was left to me."

CONCLUSIONS OF LAW

A. That an insufficient degree of direction and control was exercised over petitioner's sales activities so as to constitute a bona fide relationship of employer-employee. Accordingly, petitioner's activities were those of an independent contractor and constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law.

B. That the income derived from petitioner's sales activities is subject to the imposition of unincorporated business tax within the meaning and intent of section 701 of the Tax Law.

C. That the petition of Sile M. Silberg is denied and the Notice of Deficiency dated June 26, 1978 is sustained with respect to petitioner's unincorporated business tax liability.

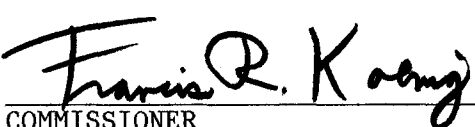
DATED: Albany, New York

MAR 06 1981

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER