

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Mitchell Cotton

:

:

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, 1969 & 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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Mitchell Cotton, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Mitchell Cotton
39 Centre Dr.
Syosset, NY 11791

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
27th day of May, 1982.

Annice A. Hegeler

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of
Mitchell Cotton

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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, 1969 & 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 27th day of May, 1982, he served the within notice of Decision by certified mail upon Arthur K. Ash the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Arthur K. Ash
Ash & Ash
15 Park Row
New York, NY 10038

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
27th day of May, 1982.

Cornie A. Haglund

J. Vredenburg

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

May 27, 1982

Mitchell Cotton
39 Centre Dr.
Syosset, NY 11791

Dear Mr. Cotton:

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
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Arthur K. Ash
Ash & Ash
15 Park Row
New York, NY 10038
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
MITCHELL COTTON	:	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.	:	

Petitioner Mitchell Cotton, 39 Centre Drive, Syosset, New York 11791, 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 1968, 1969 and 1970 (File No. 23658).

A Small Claims hearing was held before Samuel Levy, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 25, 1981 at 9:15 A.M. Petitioner Mitchell Cotton appeared with Ash & Ash (Arthur K. Ash, Esq., of counsel). The Audit Division appeared by Ralph J. Vecchio, Esq. (Samuel Freund, Esq., of counsel).

ISSUES

I. Whether the Notice of Deficiency issued against petitioner for the years at issue is barred by the statute of limitations.

II. Whether petitioner's failure to timely file a petition for Redetermination of a Deficiency within ninety days after the mailing of the Notice of Deficiency bars him from seeking a Redetermination of said Deficiency.

III. Whether the income received by petitioner for subject years was derived from services performed as an employee, or whether said income was derived by him from the carrying on of an unincorporated business, thereby making him subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner Mitchell Cotton, a manufacturer's sales representative, did not file unincorporated business tax returns for the years 1968, 1969, 1970.

2. On March 31, 1975, the Audit Division issued a Notice of Deficiency against petitioner asserting unincorporated business tax of \$6,560.85, plus interest of \$1,932.11 for a total of \$8,492.96 for the years 1968, 1969 and 1970. The Notice of Deficiency was based on a Statement of Audit Changes issued under same date which held that petitioner's activities as a manufacturer's representative constitutes the carrying on of an unincorporated business, and the net income derived therefrom is subject to unincorporated business tax.

3. Petitioner concedes that he failed to file a petition for a Redetermination of a Deficiency within ninety days after the mailing of the Notice of Deficiency. He contends however, that his failure to file a petition timely was due to his prior representative's negligence and his inability to resolve the matter personally because of his occupation which required constant traveling without New York State.

CONCLUSION OF LAW

A. That since unincorporated business tax returns were not filed by the petitioner for the years 1968, 1969 and 1970 the three (3) year statute of limitation for assessment had not expired for said years in accordance with the meaning and intent of section 683(c)(1)(A) of the Tax Law.

B. That the petitioner has failed to timely file a Petition for Redetermination of a Deficiency within ninety days after the mailing of the Notice of Deficiency in accordance with the meaning and intent of Section 689(b) of the Tax Law.

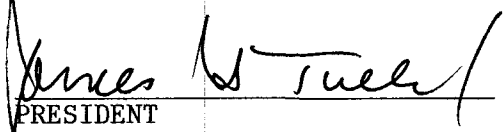
C. That since the petitioner has failed to timely file a petition for redetermination of a deficiency pursuant to Conclusion of Law "B"; the issue raised with respect to the unincorporated business tax is rendered moot.

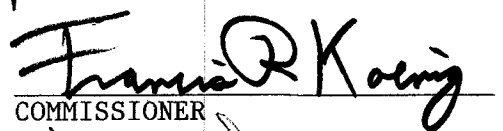
D. That the petition of Mitchell Cotton is denied and the Notice of Deficiency dated March 31, 1975 is sustained together with such additional interest as may be lawfully owing.

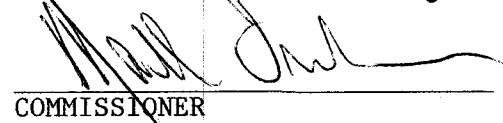
DATED: Albany, New York

MAY 27 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER