

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Jonas E. Richman

:

:

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 1971 - 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 21st day of May, 1982, he served the within notice of Decision by certified mail upon Jonas E. Richman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Jonas E. Richman
9 Montclair Rd.
Yonkers, NY 10710

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
21st day of May, 1982.

Connie A. Haglund

J. Vredenburg

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition
of

Jonas E. Richman

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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 1971 - 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 21st day of May, 1982, he served the within notice of Decision by certified mail upon Martin S. Sussman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Martin S. Sussman
Seltzer & Sussman
1250 Broadway
New York, NY 10001

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
21st day of May, 1982.

Cornie A. Hagelund

J. Vredenburg

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

May 21, 1982

Jonas E. Richman
9 Montclair Rd.
Yonkers, NY 10710

Dear Mr. Richman:

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
Martin S. Sussman
Seltzer & Sussman
1250 Broadway
New York, NY 10001
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JONAS E. RICHMAN	:	DECISION
	:	
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1971,	:	
1972 and 1973.	:	

Petitioner, Jonas E. Richman, 9 Montclair Road, Yonkers, New York 10710, 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 1971, 1972 and 1973 (File No. 24973).

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 July 23, 1981 at 10:45 A.M. Petitioner Jonas E. Richman appeared with Martin S. Sussman, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (S. Freund, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities during the years 1971, 1972 and 1973 is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner Jonas E. Richman and Dorothy Richman, his wife, filed joint New York State income tax resident returns for the years 1971, 1972 and 1973, on which net business income was reported from petitioner's activities as a salesman. Petitioner Jonas E. Richman did not file an unincorporated business tax return for the years 1971, 1972 and 1973.

2. On October 13, 1978, the Audit Division issued a Notice of Deficiency for the years 1971, 1972 and 1973 for \$4,483.25 plus interest, along with an explanatory Statement of Audit Changes which indicated that the income from petitioner's activities as a self-employed jewelry salesman was held subject to the unincorporated business tax.

3. Petitioner Jonas E. Richman was a salesman during the years 1971, 1972 and 1973, representing Aurea Jewelry Creations, Inc. (hereinafter Aurea) whom he had represented since 1967. In addition, petitioner was Aurea's regional sales manager with the responsibility of supervising other salesmen retained by Aurea. Accordingly, petitioner earned commissions from his activities as a salesman and an override commission from the activities of the other salesmen.

4. Petitioner was given a specific sales territory by Aurea, which was limited to the east coast of the United States from Maine to Washington, D.C. Petitioner was required to submit to Aurea, weekly written reports reporting all his activities, and the results thereof, conducted as a salesman and as the regional sales manager. In addition, petitioner was required to attend trade shows, to travel to Italy to select merchandise, to provide training to new salesmen, to service overdue accounts and to make collections.

5. Petitioner was provided with samples, business cards, stationery, order forms, office facilities, a medical insurance plan and was covered under a worker's compensation plan.

6. Petitioner was under the direct supervision of the general sales manager. All sales were subject to the approval of Aurea.

7. Petitioner was required to take his vacation during the first two weeks of July of every year. In addition, petitioner was forbidden from representing other firms or from selling other lines of merchandise.

8. Petitioner was required to be in the office and attend to clients, as well as attend to clients at trade shows. However, regardless of the clients attended to, commissions were paid to petitioner solely from sales made to clients within his assigned territory. The commissions paid to the petitioner were not subject to the withholding of payroll taxes.

9. Upon advice from his accountant, petitioner established and contributed to a retirement plan (Keogh Plan) during the years 1971, 1972 and 1973.

CONCLUSIONS OF LAW

A. That sufficient direction and control was exercised by Aurea Jewelry Creations, Inc. during 1971, 1972 and 1973 so as to cause petitioner Jonas E. Richman to become its employee within the meaning and intent of section 703(b) of the Tax Law, and accordingly, the income derived therefrom is not subject to the unincorporated business tax.

B. That the petition of Jonas E. Richman is granted and the Notice of Deficiency issued October 13, 1978 is cancelled.

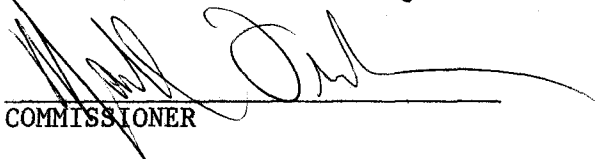
DATED: Albany, New York

MAY 21 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER