

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Seymour L. Sandick :
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 1974 & 1975. :

AFFIDAVIT OF MAILING

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 4th day of June, 1982, he served the within notice of Decision by certified mail upon Seymour L. Sandick, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Seymour L. Sandick
1208 Clements Bridge Rd.
Barrington, NJ 08007

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
4th day of June, 1982.

Bennie G. Haglund

J. Vredenburg

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

June 4, 1982

Seymour L. Sandick
1208 Clements Bridge Rd.
Barrington, NJ 08007

Dear Mr. Sandick:

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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

SEYMOUR L. SANDICK

DECISION

for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Years 1974
and 1975.

Petitioner, Seymour L. Sandick, 1208 Clements Bridge Road, Barrington, New Jersey 08007, 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 1974 and 1975 (File No. 26442).

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 26, 1981 at 2:45 P.M. Petitioner Seymour L. Sandick appeared pro se. The Audit Division appeared by Ralph J. Vecchio, Esq. (Irwin Levy, Esq., of counsel).

ISSUES

I. Whether petitioner's activities as an outside salesman constitutes the carrying on of an unincorporated business, the income from which is subject to the imposition of unincorporated business tax.

II. If petitioner is found to be engaged in an unincorporated business, whether his failure to file unincorporated business tax returns for 1973 and 1974 was due to reasonable cause.

FINDINGS OF FACT

1. Petitioner, Seymour L. Sandick and his wife Margot W. Sandick filed a separate New York State income tax resident return on form IT-208, for 1974. Petitioner filed a separate New York State Income Tax Resident Return (form IT-201) for 1975. Petitioner on said returns, listed his occupation as an outside commission salesman; however, he did not file unincorporated business tax returns.

2. On September 15, 1978, the Audit Division issued a Notice of Deficiency against petitioner, together with an explanatory Statement of Audit Changes, dated April 27, 1978, asserting unincorporated business tax of \$468.92, plus penalties pursuant to section 685(a)(1), (a)(2) and (c) of the Tax Law and interest of \$361.42 for a total of \$827.34. The Notice of Deficiency and Statement of Audit Changes were issued on the basis that petitioner's activities as an outside commission salesman was subject to unincorporated tax; and, for his failure to file said returns, asserted penalties, supra.

3. Petitioner for subject years had been engaged as a commission salesman of fabrics. During said period, petitioner represented three principals concurrently.

4. None of the principals whom petitioner represented as a commission salesman, reimbursed him for selling expenses, nor did they withhold income or FICA taxes. Further, none of his principals provided him with either a pension or medical plan. Petitioner had no sick leave; and he determined when he would take his unpaid vacation.

5. Petitioner made up his own itinerary, without review or approval by any of his principals. There was little or no control over his day-to-day

activities by any of his principals. The principals were primarily interested in the results obtained by petitioner, and, not in the manner in which the results were obtained.

6. Petitioner did not file unincorporated business tax returns for subject years in reliance on the advice of his accountant, a C.P.A., who prepared petitioner's personal income tax returns for said years.

CONCLUSIONS OF LAW

A. That petitioner's activities as an outside salesman for 1974 and 1975 constituted the carrying on of an unincorporated business in accordance with the meaning and intent of section 703(a) of the Tax Law, and that the income derived therefrom is subject to unincorporated business tax imposed under section 701(a) of the Tax Law.

B. That petitioner, Seymour L. Sandick's failure to file unincorporated business tax returns for 1974 and 1975 was due to reasonable cause, and not due to wilfull neglect, and accordingly penalties asserted pursuant to sections 722 and 685, subdivisions (a)(1) and (a)(2) of the Tax Law are to be cancelled.

C. That in general, relief from penalty imposed pursuant to sections 722 and 685(c) of the Tax Law for failure to file declaration or underpayment of estimated unincorporated business tax is obtained through subsection (d) of section 685. Petitioner has failed to submit any information showing that he qualifies for any of the relief provisions of section 685(d) of the Tax Law.

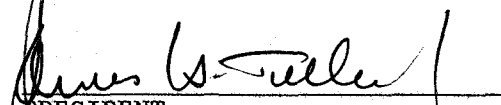
D. That the Audit Division is hereby directed to modify the Notice of Deficiency issued September 15, 1978 to be consistent with the Conclusions of

Law determined hereto; and that, except as so granted, the petition is in all other respects denied. The Notice of Deficiency, as modified, is sustained, together with such interest as may be legally due and owing.


DATED: Albany, New York

JUN 04 1982

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER