

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
Ronald G. & Anne Sarner :  
for Redetermination of a Deficiency or a Revision :  
of a Determination or a Refund of Personal Income :  
& UBT under Article 22 & 23 of the Tax Law for the :  
Year 1973. :

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 13th day of August, 1982, he served the within notice of Decision by certified mail upon Ronald G. & Anne Sarner, the petitioners in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Ronald G. & Anne Sarner  
211 W. Seneca St.  
Vernon, NY 13476

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  
13th day of August, 1982.

*Conrad A. H. [Signature]*

*J. Vredenburg*



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

August 13, 1982

Ronald G. & Anne Sarner  
211 W. Seneca St.  
Vernon, NY 13476

Dear Mr. & Mrs. Sarner:

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) 690 & 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  
Charles H. Ruller  
156 Main St., Garofalo Bldg.  
Oneida, NY 13421  
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition  
of  
RONALD G. SARNER and ANNE SARNER  
for Redetermination of a Deficiency or for  
Refund of Personal Income and Unincorporated  
Business Taxes under Articles 22 and 23 of the  
Tax Law for the Year 1973.

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DECISION

Petitioners, Ronald G. Sarner and Anne Sarner, 211 West Seneca Street, Vernon, New York 13476, filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the year 1973 (File No. 16407).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, 207 Genesee Street, Utica, New York, on May 13, 1980 and December 11, 1980 at 9:15 A.M. and 10:45 A.M. respectively. Petitioner, Ronald G. Sarner, appeared with Charles H. Ruller, P.A. The Audit Division appeared by Ralph J. Vecchio, Esq. (J. Ellen Purcell and Barry M. Bresler, Esqs., of counsel).

ISSUE

Whether the income from petitioner's activities as a wool broker during 1973 was subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioners, Ronald G., Sarner and Anne Sarner, filed a joint New York State Income Tax Resident Return for 1973. Petitioners did not file New York State Unincorporated Business Tax Return for said year.

2. On August 30, 1976, the Audit Division issued to petitioners, Ronald G. Sarner and Anne Sarner, a Notice of Deficiency and a Statement of Audit Changes detailing an unincorporated business tax deficiency for the year 1973 on the grounds that income from commission as a wool broker was subject to unincorporated business tax due for the year 1973 of \$2,374.14, plus interest of \$422.95, less overpayment of \$380.90, for a total of \$2,416.19.

3. Petitioner Ronald G. Sarner had one principal and held the title of Assistant to the President with Waterbury Felt Company. The petitioner was the only buyer of wool for the company and the only seller of the company's wool waste and by-products. The petitioner Ronald G. Sarner began working for Waterbury Felt Company in 1960 and was on the payroll until the middle of 1972, when the company, under new management, changed the way the petitioner received his stipend. The petitioner's duties and responsibilities did not change, however, the company no longer withheld Federal, State or local payroll taxes.

4. Petitioner Ronald G. Sarner's office was provided by Waterbury Felt Company. Petitioner was reimbursed for part of his travel expenses. Petitioner spent approximately sixty percent of his time buying raw wool at auctions for the company from cooperatives in the western United States and in Canada. The company set the maximum price and the quality and quantity of raw wool required by the company.

The remaining time was spent selling wool waste and by-products that were produced by the manufacturing of felt. The company set the minimum price it would accept for its wool waste and by-products. The petitioner would then sell the wool waste and by-products at the market price. The difference between the market price and the minimum price would determine the petitioner's stipend each year including the year in issue. The petitioner did not have

personal title to the raw wool, wool waste or by-products that he either bought or sold for the company.

5. Petitioner Ronald G. Sarner when on business trips, would be in daily contact with the company. Petitioner did not enter into any business transactions without the knowledge and consent of the company.

6. Petitioner Ronald G. Sarner filed a Schedule C (Profit (Loss) From Business or Profession) for 1972 to show the income he received from the company. On the Schedule C he reported as "gross receipts" the market price of the wool waste and by-products he sold for Waterbury Felt Company. Under "cost of goods sold" he reported the minimum price that the company accepted for its wool waste and by-products. The difference between the two was the petitioner's stipend.

#### CONCLUSIONS OF LAW

A. That sufficient direction and control were exercised by the Waterbury Felt Company over petitioner Ronald G. Sarner's activities so as to create an employee-employer relationship; therefore, the income received by petitioner, Ronald G. Sarner, during the year 1973 from Waterbury Felt Company was derived from services performed by him in the capacity of an employee of said principal, in accordance with section 703(b) of the Tax Law. Accordingly, said income is not subject to the unincorporated business tax.

B. That the petition of Ronald G. Sarner and Anne Sarner is granted and the Notice of Deficiency issued on August 30, 1976 is cancelled. The Audit

Division is directed to make payment of the refund on the personal return,  
together with such additional interest as may be lawfully owing.

DATED: Albany, New York

STATE TAX COMMISSION

AUG. 13 1982

*L. L. L. L.*  
*PMB*

ACTING PRESIDENT

*Frank R. Krug*  
COMMISSIONER

*[Signature]*  
COMMISSIONER