

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Leonard Silverman

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 1976. :

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 October, 1982, he served the within notice of Decision by certified mail upon Leonard Silverman, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

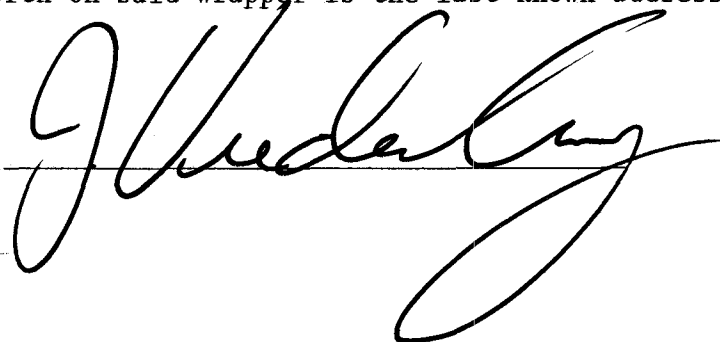
Leonard Silverman
40 Marina Key
Secaucus, NJ 07094

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 October, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
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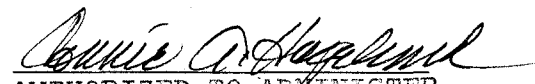
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 6th day of October, 1982, he served the within notice of Decision by certified mail upon Louis C. Fink the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

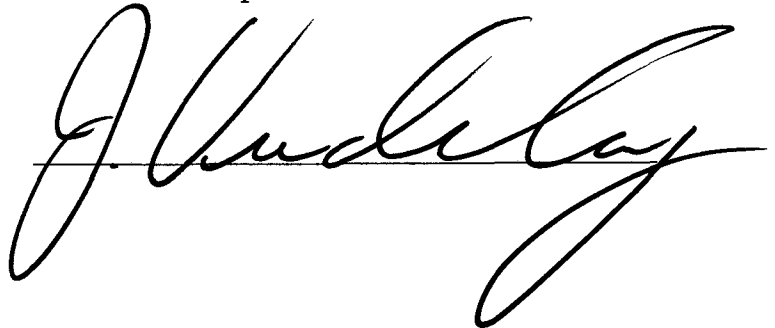
Louis C. Fink
230 Park Ave.
New York, NY 10017

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
6th day of October, 1982.


AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

October 6, 1982

Leonard Silverman
40 Marina Key
Secaucus, NJ 07094

Dear Mr. Silverman:

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
Louis C. Fink
230 Park Ave.
New York, NY 10017
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
LEONARD SILVERMAN
for Redetermination of a Deficiency or for
Refund of Unincorporated Business Tax under
Article 23 of the Tax Law for the Year 1976.

DECISION

Petitioner, Leonard Silverman, 40 Marina Key, Secaucus, New Jersey 07094, 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 1976 (File No. 27414).

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 October 27, 1981 at 2:45 P.M. Petitioner, Leonard Silverman, appeared by Louis C. Fink, Esq. The Audit Division appeared by Ralph J. Vecchio, Esq. (Alexander Weiss, Esq., of counsel).

ISSUE

Whether the income derived from petitioner's activities as a manufacturer's representative is subject to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner, Leonard Silverman, and his wife, Helen Silverman, filed a joint New York State Income Tax Resident Return for the year 1976, on which petitioner indicated that he was self-employed and reported net business income of \$19,374.00. An unincorporated business tax return was not filed by petitioner for the year 1976.

2. On August 31, 1979 the Tax Compliance Bureau issued a Notice of Deficiency for the year 1976 for \$577.46 plus interest, along with an explanatory Statement of Audit Changes which indicated that the income derived from petitioner's activities as a manufacturer's sales representative was held subject to the unincorporated business tax.

3. Petitioner, Leonard Silverman, contended that he was an employee of a furniture company, selling furniture on a commission basis. Petitioner submitted letters from furniture companies covering the tax year 1978, which was a year not at issue. No sworn testimony was rendered by petitioner and no documentary evidence was submitted establishing the nature, character, terms and conditions of his relationship with the furniture firm he represented, or the nature and degree of direction and control imposed by the companies he represented during the year 1976.

CONCLUSIONS OF LAW

A. That petitioner, Leonard Silverman, has failed to sustain the burden of proof required by section 689(e) of the Tax Law in establishing that he was an employee, as defined by 20 NYCRR 203.10(b).

B. That petitioner, Leonard Silverman's, activities as a manufacturer's sales representative during the year 1976 constituted the regularly carrying on of an unincorporated business pursuant to section 703 of the Tax Law and the income derived therefrom is subject to the imposition of unincorporated business tax in accordance with the meaning and intent of section 701 of the Tax Law.

C. That the petition of Leonard Silverman is denied and the Notice of Deficiency issued August 31, 1979 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

OCT 06 1982

STATE TAX COMMISSION

ACTING PRESIDENT

COMMISSIONER

COMMISSIONER