

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Al D. Baitsholts :
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 1973 & 1974. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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, 1983, he served the within notice of Decision by certified mail upon Al D. Baitsholts, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Al D. Baitsholts
98 Harvest Dr.
Fairport, NY 14450

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, 1983.

David Parchuck

James A. O'Connell

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Al D. Baitsholts :
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 1973 & 1974. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, 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, 1983, he served the within notice of Decision by certified mail upon Thomas G. Hall the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas G. Hall
1090 Culver Rd.
Rochester, NY 14609

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, 1983.

David Parchuck

Caroline A. Hayland

AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

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

May 27, 1983

Al D. Baitsholts
98 Harvest Dr.
Fairport, NY 14450

Dear Mr. Baitsholts:

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 Law 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
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Thomas G. Hall
1090 Culver Rd.
Rochester, NY 14609
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AL D. BAITSHOLTS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1973	:	
and 1974.	:	

Petitioner, Al D. Baitsholts, 98 Harvest Drive, Fairport, New York 14450, 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 1973 and 1974 (File No. 25113).

A small claims hearing was held before James Hoefer, Hearing Officer, at the offices of the State Tax Commission, One Marine Midland Plaza, Rochester, New York, on August 16, 1982 at 2:45 P.M. Petitioner appeared by Thomas G. Hall, P.A. The Audit Division appeared by Paul B. Coburn, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether petitioner's activities as a manufacturer's representative constituted the carrying on of an unincorporated business, thereby subjecting the income derived from said activity to the unincorporated business tax.

FINDINGS OF FACT

1. Petitioner herein, Al D. Baitsholts (now deceased), timely filed New York State income tax resident returns for the years 1973 and 1974 wherein he reported business income of \$16,420.89 and \$27,159.04, respectively. No unincorporated business tax returns were filed for either of the years at issue.

2. On December 15, 1978, the Audit Division issued a Notice of Deficiency to petitioner and his wife, Miriam D. Baitsholts, asserting that for the years 1973 and 1974 unincorporated business tax of \$1,391.27 was due, together with interest. The Notice of Deficiency was based on a Statement of Audit Changes dated September 6, 1977 wherein the income derived from petitioner's activities as a manufacturer's representative was deemed subject to unincorporated business tax.

3. At the hearing held herein the Audit Division conceded that Mrs. Baitsholts was not actively or otherwise involved in her husband's activities as a manufacturer's representative and that her name was to be deleted from the Notice of Deficiency dated December 15, 1978.

4. During the years at issue petitioner was a manufacturer's representative for Leister's Furniture, Inc. (hereinafter "Leister"). The business income reported on the 1973 and 1974 income tax returns represented commission income received solely from Leister. Petitioner was prohibited from carrying any line which was competitive with Leister's, while he was permitted to carry non-competitive lines. For the years 1973 and 1974 petitioner sold only those products carried by Leister.

5. Petitioner was assigned a specific sales territory by Leister which encompassed approximately the western half of New York State. Petitioner had no authority to approve requests for credit or set prices. All shipping, billing and collection of accounts receivable was handled by Leister. Petitioner did not maintain an inventory nor did he carry any product liability insurance.

6. Petitioner was required to attend at least one home office sales meeting a year, as well as attend those furniture shows in his assigned territory

where the Leister line was being presented. Leister provided petitioner with business cards, catalogs, order blanks and brochures.

7. Petitioner's sales activities for Leister were carried on from an office maintained in his personal residence. Leister's office was located in Hanover, Pennsylvania. Leister furnished petitioner with sales leads, however, petitioner also sought out customers on his own initiative.

8. Petitioner set his own itinerary although Leister from time to time would direct petitioner to meet with a specific customer. Petitioner filed reports with Leister two to four times a month either in writing or by telephone.

9. Petitioner paid for all expenses incurred in his sales activities without reimbursement from Leister. No Federal, State or social security taxes were withheld by Leister from the commissions paid to petitioner.

10. During the years at issue petitioner was in his mid 70's, having spent almost his entire adult life working as a salesman. Leister was primarily concerned with the results of petitioner's sales activities and not the methods utilized in achieving those results.

CONCLUSIONS OF LAW

A. That petitioner's activities as a manufacturer's representative during the years 1973 and 1974 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and the income derived from said activity is subject to unincorporated business tax.


B. That pursuant to Finding of Fact "3", supra, Miriam D. Baitsholts' name is to be deleted from the Notice of Deficiency dated December 15, 1978.

C. That the petition of Al D. Baitsholts is granted to the extent indicated in Conclusion of Law "B", supra; and that, except as so granted, the petition is in all other respects denied.

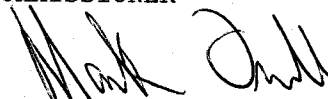
DATED: Albany, New York

MAY 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

TA 26 (9-79)

STATE OF NEW YORK
State Tax Commission
TAX APPEALS BUREAU
STATE CAMPUS
ALBANY, N. Y. 12227

CLAIM CHECK
NO.

824068

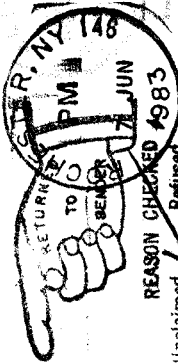
☐ HOLD

1ST NOTICE

2ND NOTICE

RETURN

Detached from
PS Form 3849-A
Oct. 1980

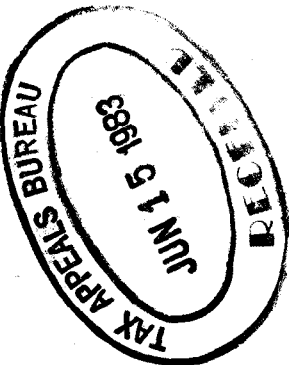


Unclaimed
Reason checked 1983

Refused
Addressee unknown
Insufficient Address
No such street number
No such office in state
Do not remail in this envelope

~~Al D. Baitsholts
98 Harvest Dr
Fairport, NY 14450~~

*6 June 1981
Mrs. A. Baitsholts*



CERTIFIED

P 481 207 814

MAIL



REQUEST FOR BETTER ADDRESS

Requested by Tax Appeals Bureau Room 107 - Bldg. #9 State Campus Albany, New York 12227	Unit	Date of Request 6/15/83
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Please find most recent address of taxpayer described below; return to person named above.

Social Security Number	Date of Petition DEC SC 5-27-83
Name Al D Bartschalt	
Address 98 Harvest Dr Fairport NY 14450	

Results of search by Files

<input type="checkbox"/> New address:	
<input type="checkbox"/> Same as above, no better address	
<input checked="" type="checkbox"/> Other:	Deceased daughter on envelope unclaimed by Mrs A Bartschalt

Searched by	Section	Date of Search

PERMANENT RECORD

FOR INSERTION IN TAXPAYER'S FOLDER

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

May 27, 1983

Al D. Baitsholts
98 Harvest Dr.
Fairport, NY 14450

Dear Mr. Baitsholts:

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NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Thomas G. Hall
1090 Culver Rd.
Rochester, NY 14609
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
AL D. BAITSHOLTS	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1973	:	
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2. On December 15, 1978, the Audit Division issued a Notice of Deficiency to petitioner and his wife, Miriam D. Baitsholts, asserting that for the years 1973 and 1974 unincorporated business tax of \$1,391.27 was due, together with interest. The Notice of Deficiency was based on a Statement of Audit Changes dated September 6, 1977 wherein the income derived from petitioner's activities as a manufacturer's representative was deemed subject to unincorporated business tax.

3. At the hearing held herein the Audit Division conceded that Mrs. Baitsholts was not actively or otherwise involved in her husband's activities as a manufacturer's representative and that her name was to be deleted from the Notice of Deficiency dated December 15, 1978.

4. During the years at issue petitioner was a manufacturer's representative for Leister's Furniture, Inc. (hereinafter "Leister"). The business income reported on the 1973 and 1974 income tax returns represented commission income received solely from Leister. Petitioner was prohibited from carrying any line which was competitive with Leister's, while he was permitted to carry non-competitive lines. For the years 1973 and 1974 petitioner sold only those products carried by Leister.

5. Petitioner was assigned a specific sales territory by Leister which encompassed approximately the western half of New York State. Petitioner had no authority to approve requests for credit or set prices. All shipping, billing and collection of accounts receivable was handled by Leister. Petitioner did not maintain an inventory nor did he carry any product liability insurance.

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10. During the years at issue petitioner was in his mid 70's, having spent almost his entire adult life working as a salesman. Leister was primarily concerned with the results of petitioner's sales activities and not the methods utilized in achieving those results.

CONCLUSIONS OF LAW


A. That petitioner's activities as a manufacturer's representative during the years 1973 and 1974 constituted the carrying on of an unincorporated business within the meaning and intent of section 703(a) of the Tax Law and the income derived from said activity is subject to unincorporated business tax.


B. That pursuant to Finding of Fact "3", supra, Miriam D. Baitsholts' name is to be deleted from the Notice of Deficiency dated December 15, 1978.


C. That the petition of Al D. Baitsholts is granted to the extent indicated in Conclusion of Law "B", supra; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
MAY 27 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER