

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Sol & Gertrude Guisokoff

For a Redetermination of a Deficiency or
a Refund of Income & UBT
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1964

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

Guisokoff
Per [unclear]
+ WBT
1970

State of New York
County of Albany

Janet Wright, being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 30th day of November, 1970, she served the within
Notice of Decision (or Determination) by (certified) mail upon Philip S.

Beispeil (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Philip S. Beispeil
342 Madison Avenue
New York, New York

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
of) 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

30th day of November, 1970

Lawrence A. [unclear]

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
Sol & Gertrude Guisokoff

For a Redetermination of a Deficiency or
a Refund of Income & UBT
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1964

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Janet Wright, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 30th day of November, 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Sol & Gertrude Guisokoff (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Sol & Gertrude Guisokoff
175 East 74th Street
New York, New York 10021

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 Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative of) 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

30th day of November, 1970.

Lawrence A. Harrison

Janet Wright

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SOL GUSIKOFF & GERTRUDE GUSIKOFF,	:	DECISION
his wife	:	
for a Redetermination of a Deficiency or	:	
for Refund of Personal Income Taxes under	:	
Article 22 and of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law for	:	
the year 1964	:	

Taxpayers have petitioned for a redetermination of a deficiency or for refund of personal income taxes of \$189.08 (based upon disallowances of contributions and miscellaneous deductions) and unincorporated business taxes of \$930.12 (based upon a deficiency notice including \$707.46 additional unincorporated business taxes under date of April 24, 1967, file #12275663 plus \$222.66 unincorporated business taxes reported and paid by taxpayers but later claimed under an amended return to be erroneously paid) A formal hearing was held before Solomon Sies, Hearing Officer, in the offices of the State Tax Commission in the City of New York on December 27, 1967, and continued on May 22, 1968. The petitioners were represented by Phillip S. Beispiel, CPA.

FINDINGS OF FACT

1. The issues in this case are whether the activities of the taxpayer constitute the carrying on of an unincorporated business subject to unincorporated business taxes and whether certain disallowances of contributions and other miscellaneous deductions should be sustained.

2. Taxpayer performs as a musician, inside contractor and outside contractor. As a contractor his duties consist of selecting musicians to perform with various orchestras. These duties as a contractor are completely separate and distinct from those as a musician.

3. When acting in the capacity of a musician the petitioner, under the same contract, also performs as an inside contractor. Petitioner's salary for his duties as a musician, is increased because of his extra duties as an inside contractor. Earnings in this capacity for the year were reported as \$16,748.42. These earnings were not reported as unincorporated business income.

4. When acting in the capacity of an outside contractor the petitioner did not perform as a musician. Neither was he under a contract. Earnings in this capacity were reported originally as unincorporated business income in the amount of \$19,197.63 for the year 1964. The petitioner filed an amended return claiming this amount should not have been reported as unincorporated business income and increasing certain deductions.

5. The petitioner does not get reimbursed for his expenses. There is no direction and control as to the manner and means of accomplishing desired results, as an outside contractor.

6. An audit conducted by the Income Tax Bureau resulted in a disallowance of certain deductions claimed by the petitioner on his 1964 returns. It also included the \$16,748.42 referred to in paragraph 3 above as unincorporated business income. Adjustments to the petitioner's returns were made as follows:

	<u>Claimed</u>	<u>Substantiated & Allowed</u>	<u>Adjustments Personal Income</u>	<u>Unincorporated Business</u>
Accident & Health Insurance	\$ 376.17	\$ 0	\$ 376.17	\$ -
Contributions -				
IT-208	431.00	149.00	282.00	-
IT-202	400.00	149.00	-	251.00
<u>Other Deductions</u>				
Promotion Expense	1,027.22	710.19	317.03	317.03
Auto Expense	1,233.88	863.72	370.16	370.16
Income Subject to U.B.T.	19,197.63	35,946.05	-	16,748.42
NYS Addition (Modification)	0	545.47	545.47	-
Increase in NY Taxable Income			\$1,890.83	\$17,686.61

These adjustments resulted in the deficiency notice of April 24, 1967, as outlined above.

7. Of the \$376.17 claimed as a deduction for Accident and Health Insurance, petitioner was able to substantiate \$150.13 as the medical premium. Substantiation for other deductions was not provided by the taxpayer.

DECISION

A. The amended return for 1964 is not substantiated. Taxpayer's income was substantially correct as reported on his original return.

B. The combined activities of the taxpayer as musician and contractor do not constitute the carrying on of an unincorporated business under Article 23 of the Tax Law.

C. Portions of the deficiency are incorrect as follows:

(1) Unincorporated Business Tax

a. The portion of the deficiency holding the additional income of \$16,748.42 subject to unincorporated business tax of \$669.93 is incorrect.

b. Expenses of \$938.19 deducted by the taxpayer from unincorporated business income reported on the 1964 return were not substantiated. This amount is subject to unincorporated business tax in the amount of \$37.53.

c. The deficiency as it applies to unincorporated business tax is therefore reduced from \$707.46 to \$37.53.

(2) Personal Income Tax

a. The medical portion of taxpayer's deduction for Accident and Health Insurance is substantiated at \$150.13.

b. All other expenses were not substantiated and are not allowed as deductions.

c. Taxpayer's assessment of \$189.08 for additional personal income tax therefore is reduced by \$15.01 (10% of \$150.13) to \$174.07.

D. The taxpayer has sustained his burden of proof with respect to certain items of the deficiency. The petition is therefore approved to the extent that it is reduced from \$896.54 to \$211.60 plus such interest as may be lawfully due.

DATED: Albany, New York
November 27, 1970

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Nixley
COMMISSIONER

Milton Green
COMMISSIONER

*Revised McCombe
1970 Fax*

December 15, 1970

Mr. Sol Gusikorr
142 West End Avenue
New York, New York 10023

Dear Mr. Gusikoff:

In regard to your letter dated December 11, 1970,
we are enclosing a copy of the decision for your
use.

Our office on December 1, 1970, mailed a copy of
the decision to your old address, 175 East 74th Street,
New York, New York, 10021. This was the last address
that we had for you.

Thank you for your concern in this matter.

Very truly yours,

LAWRENCE A. NEWMAN
Hearing Officer

142 West End Ave.
New York, N.Y. 10023
December 11, 1970

Dept. of Taxation & Finance
State Campus Room 214 A
Albany, N.Y. 12226

Attention: Mr. Lawrence A. Newman, Hearing Officer

Dear Sir:

I am referring to a Matter of the Petition of Sol Gusikoff & Gertrude Gusikoff, his wife for a Re-determination of a Deficiency or for Refund of Personal Income Taxes under Article 22 and of Unincorporated Business Taxes under Article 23 of the Tax Law for the year 1964.

I have been informed that you send a copy of the report dated November 30, 1970 to my representative, Philip S. Beispiel, Certified Public Accountant, former address 342 Madison Avenue, New York City.

I would appreciate it very much if you would please send me a copy of the decision which was sent to my representative. I also wish to inform you that my address is 142 West End Avenue, New York, N.Y. 10023.

Please be good enough to give this your attention.

Very truly yours,


SOL GUSIKOFF

SG:pfs

