

STATE OF NEW YORK
STATE TAX COMMISSION

Landowne, Harold & Barb.
~~*Barbara Landowne*~~
Personal & Unincorporated
Articles 22 & 23

In the Matter of the Petition

of

HAROLD D. AND BARBARA
LANDOWNE

For a Redetermination of a Deficiency or
a Refund of Personal & Unincorporated
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

Linda Wilson, 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 13th day of January, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon HAROLD D. AND
BARBARA LANDOWNE (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Harold D. & Barbara Landowne
88 Cardinal Road
Manhasset, 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

13th day of January, 1971.

Naitha Sunars

Linda Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HAROLD D. AND BARBARA
LANDOWNE

For a Redetermination of a Deficiency or
a Refund of Personal & Unincorporated
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

Linda Wilson, 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 13th day of January, 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon HAROLD D. AND BARBARA LANDOWNE (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. William Borden
330 West 42nd Street
New York, New York 10036
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

13th day of January, 1971.

Maitha J. Jura

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HAROLD D. LANDOWNE and	:	DECISION
BARBARA LANDOWNE	:	
for Redetermination of Deficiency or	:	
for Refund of Personal Income Tax	:	
under Article 22 and Unincorporated	:	
Business Tax under Article 23 of the	:	
Tax Law for the year 1964	:	

Petitioners, Harold D. Landowne and Barbara Landowne have filed a petition for redetermination of deficiency or for refund of personal income tax under Article 22 and unincorporated business tax under Article 23 of the Tax Law for the year 1964. (File No. 26042401) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on September 24, 1970, at 9:55 A.M. Petitioners appeared by William Borden, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert J. Rossi, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioners, Harold D. Landowne and Barbara Landowne filed a joint New York State Income Tax Resident Return for the year 1964. The return was filed on or about March 25, 1965. He did not file any unincorporated business tax return for the year 1964.

2. On November 27, 1967, the Income Tax Bureau issued and mailed statements of audit changes against petitioners Harold D. Landowne and Barbara Landowne, disallowing \$575.94 in medical and dental expenses and \$2,630.98 in travel and entertainment expenses for the year 1964 upon the ground that said expenses were unsubstantiated and further imposing unincorporated business tax upon petitioner, Harold D. Landowne's, business income as a sales representative during the year 1964, including salary income received from Blue Star Leather

Manufacturing Corp., upon the ground that his sales activities constituted the carrying on of an unincorporated business and accordingly issued notices of deficiencies in the sums of \$309.89 and \$527.05 respectively.

3. Petitioners, Harold D. Landowne and Barbara Landowne claimed a medical and dental expense deduction of \$796.78 for the year 1964. On audit the Income Tax Bureau allowed them a medical and dental expense deduction of \$220.84. Included in this allowance was \$50.00 for medical transportation. In their petition they requested that an additional amount be allowed for medical transportation. Petitioners and their family made approximately twenty trips to doctors offices during the year 1964. They failed to submit any documentary or other satisfactory evidence as to the actual cost of these trips.

4. Petitioners, Harold D. Landowne and Barbara Landowne, claimed a travel and entertainment expense deduction of \$7,570.53 for the year 1964. On audit the Income Tax Bureau allowed them a travel and entertainment deduction of \$4,939.55. Petitioners, by their representative, submitted a diary to show expenses for entertainment and travel. No evidence was produced to show how the diary was prepared and maintained. It is not clear from the diary whether the alleged entertainment expenses for Saturday night dinner parties amounting to \$1,992.00 were ordinary and necessary expenses incurred in entertaining buyers. No checks, bills or other documents were submitted to substantiate the expenses alleged in the diary. The amount claimed as a deduction for entertainment of buyers by petitioners in their petition and in the aforesaid diary varied substantially from the amount claimed by them for entertainment of customers and buyers on their 1964 Federal Income Tax Return.

5. Petitioners, Harold D. Landowne and Barbara Landowne, conceded that all of petitioner, Harold D. Landowne's, business income

as a sales representative. during the year 1964. other than his income received from Blue Star Leather Manufacturing Corp.. was subject to unincorporated business tax.

6. After an informal conference in 1969 at the New York District Office, Income Tax Section, petitioner Harold D. Landowne, was allowed to exclude commissions received from Blue Star Leather Manufacturing Corp. during the year 1965 from his business income subject to unincorporated business tax for that year.

7. Petitioner, Harold D. Landowne. was an office accessories and gift item salesman during the year 1964. He represented four unaffiliated firms in the sale of office accessories and gift items. The items sold by him for each firm were non-competitive. One of the firms for whom he sold merchandise was Blue Star Leather Manufacturing Corp. It deducted Federal and State Withholding Taxes and Social Security Taxes from commissions paid to him. It paid disability and unemployment insurance on his behalf. It did not reimburse him for any of his expenses. It did not exercise any control over him with respect to time spent or manner and means of effecting sales. It did not require a specific division of his time. On Schedule "C" of his 1964 Federal Income Tax Return he deducted business expenses in connection with his sales activities. He used his home as a business office. He used business stationery in his own name.

CONCLUSIONS OF LAW

A. That since the notice of deficiency imposing additional personal income tax upon petitioners, Harold D. Landowne and Barbara Landowne, for the year 1964, as a result of the disallowance of medical, dental, travel and entertainment expenses. was mailed to them within three years of the date they filed their 1964 New York State Income Tax Resident Return, therefore. the assessment against them for additional personal income taxes for the year 1964 was timely made in accordance with the meaning and intent of Section 683(a) of the Tax Law.

B. That petitioners, Harold D. Landowne and Barbara Landowne, failed to substantiate a deduction for medical transportation expenses during the year 1964 in excess of \$50.00.

C. That petitioners, Harold D. Landowne and Barbara Landowne failed to substantiate a deduction for travel and entertainment expenses during the year 1964 in excess of \$4,939.55.

D. That the Income Tax Bureau's determination that the petitioner Harold D. Landowne, was not liable for unincorporated business taxes on his income from Blue Star Leather Manufacturing Corp. for the year 1965 is not res judicata to a decision by it, on similar facts, that he is liable for unincorporated business taxes on similar income for the year 1964. Sundberg v Murphy 39 Misc. 2d 967. 242 N.Y.S. 2d 329 (Sup. Ct. Albany Co.. 1963).

E. That the income received by petitioner, Harold D. Landowne, from Blue Star Leather Manufacturing Corp. during the year 1964 constituted receipts from his regular business of selling office accessories and gift items and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of Section 703(b) of the Tax Law.

F. That the aforesaid business activities of petitioner, Harold D. Landowne, during the year 1964 constituted the carrying on of an unincorporated business and his business income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of Section 703 of the Tax Law.

G. That the petition of Harold D. Landowne and Barbara Landowne is denied and the notices of deficiency dated November 27, 1967, are sustained.

DATED: Albany, New York

January 13, 1971

STATE TAX COMMISSION

Norman Gallen

COMMISSIONER

Bruce Mander

COMMISSIONER

William Koehn

COMMISSIONER