

STATE OF NEW YORK
STATE TAX COMMISSION

Art. 22 & 23

In the Matter of the Petition

of

IRVING AND ISABEL BERMAN :

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

For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1966, 1967 and 1968.

State of New York
County of Albany

Rae Zimmerman, 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 23rd day of December, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Irving and
Isabel Berman
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Irving and Isabel Berman
7 Clintwood Drive
Rochester, New York 14620
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

23rd day of December, 1971.

Martha J. J. J.

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING AND ISABEL BERMAN

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

For a Redetermination of a Deficiency or
a Refund of Personal Income and Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1966, 1967 and 1968.

State of New York
County of Albany

Rae Zimmerman, 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 23rd day of December, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Melvin
Gumbiner

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Melvin Gumbiner
405 Reynolds Arcade Bldg.
Rochester, N.Y. 14614

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

23rd day of December, 1971.

Martin J. Russo

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
IRVING AND ISABEL BERMAN : DECISION
for a 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 Years 1966, 1967 and 1968. :

Petitioners, Irving and Isabel Berman, filed a petition for a redetermination of a deficiency in personal income and unincorporated business taxes for the years 1966, 1967 and 1968.

The taxpayers were represented by Melvin Gumbiner, C.P.A. and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel). The parties waived formal hearing and requested a decision based upon material contained in the Bureau's file.

ISSUES

I. Where a wife actually did the office and bookkeeping work for her husband's business but no charge was made for her services on the books of the business, may an unincorporated business deduction be taken for the reasonable value of the wife's services?

II. In the above case, may separate taxes for husband and wife be determined in accordance with section 611b(2)(B) of the Tax Law, based upon income presumably received by her as the reasonable value of her services?

FINDINGS OF FACT

1. Petitioner's personal income tax returns and Irving Berman's unincorporated business tax returns were timely filed for the years 1966, 1967 and 1968.

2. A Notice of Deficiencies in income taxes and in unincorporated business taxes for the years 1966, 1967 and 1968 was issued under File No. 8-12204375 on February 24, 1970.

3. The petitioners filed a petition for redetermination of the deficiencies.

4. Irving Berman operated an unincorporated business selling tires and/or manufacturing rubber bands in 1966, 1967 and 1968.

5. Throughout each year Isabel Berman worked at the business four and one half days a week, having charge of the office duties and prepared the weekly payroll, quarterly reports, sales journal, perpetual inventory systems and subsidiary journals.

6. The salary attributed to Isabel Berman, \$4,160.00, was reasonable. The cost of hiring outside help would have exceeded this amount.

7. Withholding taxes were not deducted.

8. All monies Isabel Berman received were charged directly to her husband's personal drawing account. This was done for convenience sake and in view of joint federal filing.

9. Taxes were provided by the timely filing of quarterly estimates of income by the husband and wife.

10. The taxpayers contend that they should not be penalized where they have shown the reasonable salary of Isabel Berman without withholding therefore. The Income Tax Bureau contends that section 705(c) of the Tax Law does not allow such modification for unincorporated business tax purposes and that section 612(f) of the Tax Law would prohibit the computation of separate taxes on a single form (IT-208).

CONCLUSIONS OF LAW

A. Under the Tax Law, the Internal Revenue Code defines income unless a different definition is clearly indicated.

B. Under section 61, Internal Revenue Code, compensation for services is includable in gross income of the recipient.

C. Under section 162, Internal Revenue Code, compensation payments are deductible where they are reasonable, are in fact payments for services, actually rendered, and where they constitute an ordinary and necessary business expense.

D. Although Isabel Berman drew checks which were charged to her husband's account and although there was not withholding, such factors do not negate the conclusion that she worked regularly for the business throughout the year and that her compensation was a reasonable, ordinary and necessary expenditure of the business under concepts of the Internal Revenue Code. To hold that the compensation for her services was not income to her or not deductible by the business, would be unreasonable.

E. Isabel Berman actually worked four and one half days each week and received monies by drawing checks. She actually earned a reasonable income of \$4,160.00. She may report the income, and the income is taxable to her.

F. Isabel Berman actually worked four and one half days each week during the years in issue. The income she earned was reasonable, and it was an ordinary and necessary business expense deduction of the unincorporated business.

G. The petition is sustained. It is determined that there are no deficiencies against petitioners in either income tax or unincorporated business tax for the years 1966, 1967 and 1968.

DATED: Albany, New York
December 23, 1971

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

George Manley
COMMISSIONER

William Kerner
COMMISSIONER