

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SOL SMOLAND & RITA SMOLAND

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

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated Business
Taxes under Article(s) 22 & 23 of the
Tax Law for the (Year(s) 1961

State of New York
County of Albany

Martha Funaro , 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 19th day of July , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sol Smoland &
Rita Smoland (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Sol Smoland & Rita Smoland
215 West 91st Street
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

19th day of July , 1972.

Rae Zimmerman

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 19, 1972

Sol Smoland & Rita Smoland
215 West 91st Street
New York, New York

Dear Mr. & Mrs. Smoland:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **689 & 722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from the date of this notice.

Any inquiries concerning the computation of tax
due or refund allowed in accordance with this
decision or concerning any other matter relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,


Paul B. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

IN THE MATTER OF THE PETITION	:	
OF	:	
SOL SMOLAND & RITA SMOLAND	:	DECISION
FOR A REDETERMINATION OF A DEFICIENCY OR	:	
FOR A REFUND OF PERSONAL INCOME TAXES	:	
UNDER ARTICLE 22 AND UNINCORPORATED	:	
BUSINESS TAXES UNDER ARTICLE 23 OF THE	:	
TAX LAW FOR THE YEAR 1961	:	

Sol Smoland and Rita Smoland, his wife, having filed a petition for redetermination of a deficiency or for a refund of personal income taxes under Article 22 and Unincorporated Business Taxes under Article 23 of the Tax Law for the year 1961, and a hearing having been held at the office of the State Tax Commission, 80 Centre Street, New York, N. Y. on August 14, 1967 before Evelyn King, Hearing Officer of the Department of Taxation and Finance, at which hearing Sol Smoland appeared in person and testified, and the matter having been duly examined and considered,

The State Tax Commission hereby finds:

(1) That the taxpayers, Sol Smoland and Rita Smoland, filed a New York State Resident Income Tax Return for the year 1961 in which they reported income in the amount of \$19,577.00 under Schedule A, line 1, from activities as an outside salesman and deducted therefrom outside salesman's expenses, not reimbursed, in the amount of \$6,266.17; that the taxpayers

did not file an Unincorporated Business Tax Return for the year 1961.

(2) That on June 7, 1965, the Department of Taxation and Finance issued a statement of audit changes against the taxpayers, Sol and Rita Smoland, for the taxable year 1961 disallowing business expenses of \$1,000 and holding that the business activities of the taxpayer, Sol Smoland, constituted the carrying on of an unincorporated business subject to Unincorporated Business Tax and, accordingly, issued a Notice of Deficiency in the sum of \$401.75, including interest.

(3) That the taxpayers did not contest the audit changes relating to disallowance of 1961 business expense in the amount of \$1,000 and have paid the additional tax and interest due thereon.

(4) That during the year 1961 the income received by the taxpayer, Sol Smoland, was received as the exclusive sales representative, within the area of Metropolitan New York and a portion of Long Island, of one principal, a manufacturer of housedresses; that the taxpayer solicited and received orders from various customers within his territory on a commission basis, which commissions accounted for more than 90% of his earnings from the principal. In addition to commissions received, taxpayer received a flat sum of \$1,500, variously denominated as salary or a bonus, for (a) showing advance styles during one day every other week to customers within his territory for their reaction, which he reported by telephone to the Designing Department of the manufacturer. No

other duties of consultation or assistance to the Designing Department of the manufacturer were required or performed by taxpayer, Sol Smoland, with regard to this activity; and (b) exhibiting the complete advance line of the manufacturer to stores within his territory for three days eight times a year for the specific purpose of obtaining firm orders for future delivery to aid the manufacturer in making a second purchase of piece goods. Taxpayer, Sol Smoland, also periodically spent a day buying dresses or blouses from stores within his territory for copying by the manufacturer.

(5) That the taxpayer deducted on his personal income tax return approximately 1/6 of his home rent, a portion of home electricity charges, postage and stationery, bank charges, business use of home phone, entertainment, business gifts and cost of periodicals, which expenses incurred in the production of his commission and other earnings from the manufacturer were not reimbursed by the manufacturer.

(6) That the taxpayer maintained an office in his home in connection with the conduct of his activities on behalf of the manufacturer from which he mailed all his orders, received his orders, and made his calls and solicitations and received his telephone calls.

(7) That the manufacturer did not deduct Social Security taxes or pay unemployment insurance or workmen's compensation on taxpayer's behalf during 1961; that taxpayer testified that both Federal and State Withholding Taxes were deducted from commissions earned; that taxpayer's New York State Income Tax return for the year 1961 indicated that no New York Tax was withheld; that there was no control by the

manufacturer of the taxpayer with respect to the sales activities of the taxpayer or the manner of making sales.

(8) That the taxpayer has failed to establish that there was an employee-employer relationship between himself and the manufacturer whom he represented; that the taxpayer during the year 1961 was an independent contractor carrying on an unincorporated business solely within the State of New York.

Based upon the foregoing findings and on all the evidence presented herein,

The State Tax Commission hereby

DECIDES:

(A) That the occupational activities of the taxpayer described herein in the year 1961 constituted the carrying on of an unincorporated business solely within the State of New York in accordance with the intent and meaning of Section 703(f) of the Tax Law.

(B) That, accordingly, the Notice of Deficiency for the year 1961 was properly issued and that the tax and interest therein are correct and are due and owing except for that portion thereof paid by the taxpayer relating to disallowance of business expense claimed for the year 1961 in the amount of \$1,000, with interest, together with any other legal interest or statutory charges; that the taxpayer's petition for a redetermination of a deficiency or for a refund of Unincorporated Business taxes under Article 23 of the Tax Law for

the year 1961 be and the same is hereby denied.

DATED: Albany, New York on this 19th day of July, 1972.

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce Maxley
COMMISSIONER

Milton Korman
COMMISSIONER