

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OTTO MANDL

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(§) 1970

State of New York
County of Albany

JANET MACK, 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 24th day of March, 1975, she served the within
Notice of Decision (~~for Determination~~) by (certified) mail upon Otto Mandl

(~~representative of~~) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Otto Mandl

1419 Eva Court
Baldwin, New York 11510

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
24th day of March, 1975.

Eatherine D. Manly

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OTTO MANDL

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(x) 1970

State of New York
County of Albany

JANET MACK, 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 24th day of March, 1975, she served the within
Notice of Decision (~~or Determination~~) by (certified) mail upon Harvey M. Lifset, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Harvey M. Lifset, Esq.

112 State Street
Albany, 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

24th day of March, 1975.

Katherine D. Mauley

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

Saul Beckelman, Acting President

A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

DATED: Albany, New York
March 24, 1975

Mr. Otto Mandl
1419 Eva Court
Baldwin, New York 11510

Dear Mr. Mandl:

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

Please take further notice that pursuant to
Section(s) **690 and 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

AD-1.12 (8/73)

STATE TAX COMMISSION

In the Matter of the Petition :
of :
OTTO MANDL :
for Redetermination of Deficiency or :
for Refund of Personal Income and :
Unincorporated Business Taxes under :
Articles 22 and 23 of the Tax Law for :
the Year 1970. :

DECISION

(File No. 0-58883268.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, on November 25, 1974, at 10:00 A.M. Petitioner appeared by Harvey M. Lifset, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq. of counsel).

Did petitioner, Otto Mandl's activities as a cutting machine and cutting machine supplies salesman during the year 1970 constitute

the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Otto Mandl, and his wife filed a New York State combined income tax return for the year 1970. He did not file a New York State unincorporated business tax return for said year.

2. On July 31, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Otto Mandl, imposing unincorporated business tax in the sum of \$547.54 upon the income received by him from his activities as a salesman during the year 1970. It also imposed additional personal income tax in the sum of \$52.75 in connection with Federal audit changes, which assessment is not being contested and has been paid by him. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$646.00.

3. Petitioner, Otto Mandl, was a cutting machine and cutting machine supplies salesman during the year 1970. He represented Anderson Oil & Chemical Company, Inc. in the sale of synthetic coolants, Nesen Diamond Tool Corporation in the sale of diamond tools and wheels and Zeisel Machinery Co., Inc. in the sale of cutting machines. During said year he earned \$10,413.92 in commissions from Anderson Oil & Chemical Company, Inc., \$12,842.41

in commissions from Nesen Diamond Tool Corporation, \$5,360.56 in commissions from Zeisel Machinery Co., Inc. and \$163.05 in miscellaneous commissions. The items sold for each firm were noncompetitive. He generally sold the products of the different firms to the same customers. He did not have any employees. He used a room in his home as an office.

4. During the year 1970, Anderson Oil & Chemical Company, Inc. and Nesen Diamond Tool Corporation withheld Federal and New York State income taxes and social security tax from the commissions paid to petitioner, Otto Mandl. Zeisel Machinery Co., Inc. did not withhold these taxes. He was a member of the Anderson Oil & Chemical Company profit sharing plan. He was not reimbursed for any of his business expenses by any of the firms. They did not exercise any substantial supervision or control over his sales activities and techniques or over the time that he devoted to sales, except to limit the territory in which he could sell.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Otto Mandl, from the firms that he represented during the year 1970 constituted income from his regular business of selling cutting machines and cutting machine supplies and not compensation as an employee exempt from the imposition of the unincorporated

business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Otto Mandl, during the year 1970 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

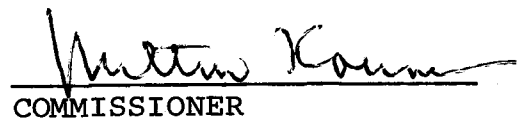
C. That the petition of Otto Mandl is denied and the Notice of Deficiency issued July 31, 1972, is sustained.

DATED: Albany, New York
March 24, 1975

STATE TAX COMMISSION

PRESIDENT


COMMISSIONER


COMMISSIONER