

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leo Lamm :
AFFIDAVIT OF MAILING
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
for the Years 1971 & 1972. :

State of New York
County of Albany

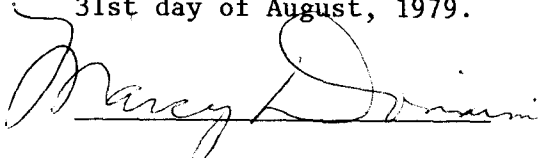
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Leo Lamm, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

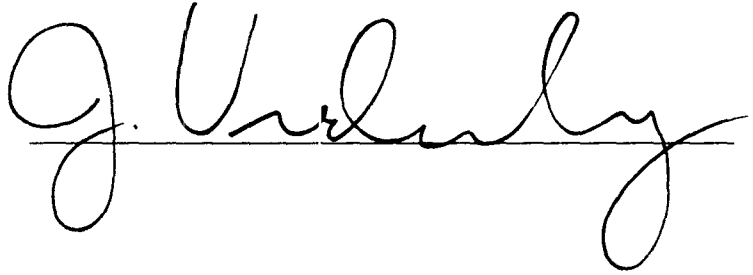
Leo Lamm
801 W. End Ave.
New York, NY 10025

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
31st day of August, 1979.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
Leo Lamm :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of :
Personal Income Tax :
under Article 22 of the Tax Law :
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State of New York
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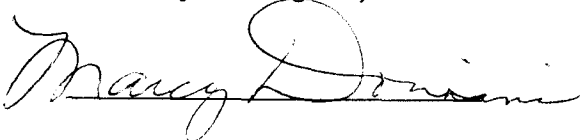
Jay Vredenburg, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 31st day of August, 1979, he served the within notice of Decision by certified mail upon Walter J. Stern the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

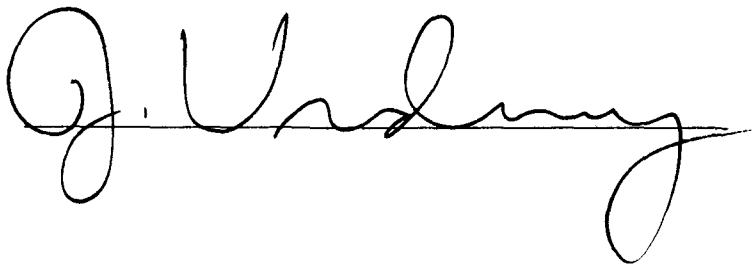
Mr. Walter J. Stern
180 W. End Ave.
New York, NY 10025

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the 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
31st day of August, 1979.







STATE OF NEW YORK
STATE TAX COMMISSION
TAX APPEALS BUREAU
ALBANY, NEW YORK 12227

STATE TAX COMMISSION

JAMES H. TULLY JR., PRESIDENT
MILTON KOERNER
THOMAS H. LYNCH

JOHN J. SOLLECITO
DIRECTOR

Telephone: (518) 457-1723

August 31, 1979

Leo Lamm
801 W. End Ave.
New York, NY 10025

Dear Mr. Lamm:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to the Deputy Commissioner and Counsel to the New York State Department of Taxation and Finance, Albany, New York 12227. Said inquiries will be referred to the proper authority for reply.

Sincerely,

A handwritten signature in cursive script, appearing to read "John J. Sollecito".

cc: Petitioner's Representative
Walter J. Stern
180 W. End Ave.
New York, NY 10025
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
LEO LAMM : DECISION
for 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 1971, 1972 and 1973. :
:

Petitioner, Leo Lamm, 801 West End Avenue, New York, New York 10025, filed a petition for 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 1971, 1972 and 1973 (File No. 15283).

A small claims hearing was held before Carl P. Wright, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on July 14, 1978 at 10:45 A.M. Petitioner appeared by Walter J. Stern, CPA. The Income Tax Bureau appeared by Peter Crotty, Esq. (Abraham Schwartz, Esq., of counsel).

ISSUES

I. Whether the Income Tax Bureau was correct in changing petitioner's business allocation formula from a three-factor method to a two-factor method (excluding payroll).

II. Whether petitioner erroneously included his gross sales as the New York sales factor.

FINDINGS OF FACT

1. Petitioner, Leo Lamm, timely filed personal income and unincorporated business tax returns for the years at issue.

2. On March 29, 1976, the Income Tax Bureau issued a Notice of Deficiency to petitioner for \$239.14, plus interest. This was done on the grounds that the three-factor business allocation method and/or formula did not fairly and equitably reflect the business income from this state and that a two-factor method should have been used. Said Notice also contained a credit adjustment for 1973, as a result of the allowance of additional contributions. The amounts reported on the returns for the years in question are not in dispute.

3. Petitioner's business activity was that of a wholesale jobber of embroideries.

4. Petitioner, Leo Lamm, rented warehouse space for \$50.00 per month at 7012 Madison Street, Guttenberg, New Jersey. Petitioner had one part-time employee working at the New Jersey warehouse. He paid the employee \$1,468.00 in 1971, \$1,326.00 in 1972 and \$1,187.00 in 1973.

5. The Income Tax Bureau determined that the inclusion of the payroll factor for allocation purposes did not properly reflect the income from New York State and that a two-factor method (excluding payroll) should be applied in lieu of the three-factor method, as shown on the return.

6. Petitioner did not dispute the fairness or equity of the method used by the Income Tax Bureau, but maintained that the Bureau was bound by the three-factor method, as stated in section 707(c) of the Tax Law.

7. Petitioner, Leo Lamm, contended that New York sales were overstated by approximately \$150,000.00 and \$100,000.00 for 1971 and 1972, respectively. He also contended that the New Jersey warehouse was used as a business office, from which he conducted his selling activities. However, no documentary or other evidence was offered to support petitioner's contentions.

CONCLUSIONS OF LAW

A. That the two-factor method and/or formula can be utilized when it is determined that the three-factor method does not fairly and equitably reflect the income from this State, in accordance with the meaning and intent of section 707(d) of the Tax Law.

B. That petitioner, Leo Lamm, did not sustain the burden of proof imposed by section 689(e) of the Tax Law, in establishing that the two-factor method used and the recomputations made by the Income Tax Bureau were incorrect; neither did he submit evidence to show that New York sales were overstated for 1971 and 1972.


C. That the petition of Leo Lamm is denied and the Notice of Deficiency issued March 29, 1976 for \$239.14 is sustained, together with such additional interest as may be lawfully owing.

DATED: Albany, New York

AUG 31 1979

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER