

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY BLOOM AND SHEILA BLOOM :

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

For a Redetermination of a Deficiency or
a Refund of Personal Income & Unincorporated
Taxes under Article(s) 22 & 23 of the Business
Tax Law for the (Year(s) 1962 & 1963 :

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 1st day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Sidney Bloom and Sheila Bloom (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Sidney and Sheila Bloom
85 Overlook Circle
New Rochelle, 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

1st day of March, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SIDNEY BLOOM AND SHEILA BLOOM :

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

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 1st day of March , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Refkin, Levin, LeBowitz & Klaw (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Refkin, Levin, LeBowitz & Klaw
501 Fifth Avenue
New York, New York 10017
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

1st day of March , 1972

Lynne Wilson

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

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 1, 1972

**Sidney and Sheila Bloom
85 Overlook Circle
New Rochelle, New York**

Dear Sir and Madam:

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

Please take further notice that pursuant to **sections 690 & 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
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 relat-
ing 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

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
SIDNEY BLOOM AND SHEILA BLOOM	:	DECISION
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 Years 1962 and 1963.	:	

Petitioners, Sidney Bloom and Sheila Bloom, have filed petitions 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 years 1962 and 1963. (File No. 3-3823637). 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 December 15, 1971 at 9:15 A.M. Rifkin, Levin, Lebowitz & Klaw, C.P.A.'s by Jerome D. Lebowitz, C.P.A. appeared for petitioners. Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau.

ISSUE

Did the petitioner, Sidney Bloom's selling activities during the years 1962 and 1963 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Sidney Bloom and Sheila Bloom, filed New York State income tax resident returns for the years 1962 and 1963. They did not file New York State unincorporated business tax returns for said years.

2. On January 22, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Sidney Bloom and Sheila Bloom, imposing additional personal income tax for the years 1962 and 1963 in conformity with a federal audit of their federal income tax returns for said years. These adjustments are not being contested by petitioners. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,791.80.

3. On January 22, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Sidney Bloom, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1962 and 1963 and accordingly issued a Notice of Deficiency in the sum of \$1,471.58.

4. Petitioner, Sidney Bloom, was a children's wear salesman during the years 1962 and 1963. He represented two unaffiliated firms in the sale of children's wear. The products sold by him for each firm were noncompetitive. He did not have an office or employees.

5. The firms for whom petitioner, Sidney Bloom, sold children's wear did not withhold Federal and New York State income taxes or social security tax from the commissions paid to him during the years 1962 and 1963. He was not reimbursed for any of his business expenses. He deducted these expenses on Schedule "C" of his federal income tax returns. The firms did not cover him for unemployment insurance. He did not receive paid vacations. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities or techniques or over the time he devoted to sales except to limit the territory in which he could sell.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Sidney Bloom, from the two firms that he represented during the years 1962 and 1963 constituted income from his regular business of selling children's wear 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, Sidney Bloom, during the years 1962 and 1963, 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 adjustments to conform with the federal audit of the income tax returns of petitioners, Sidney Bloom and Sheila Bloom, were properly made.

D. That the petitions of Sidney Bloom and Sheila Bloom are denied and the notices of deficiency dated January 22, 1968, are sustained.

DATED: Albany, New York
March 1, 1972

STATE TAX COMMISSION

Norman Gelbrau

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Koenig

COMMISSIONER