

STATE OF NEW YORK  
STATE TAX COMMISSION

---

In the Matter of the Petition

of

PAUL BURGER & SYLVIA BURGER

:  
:  
:  
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) 1961 & 1962 :

---

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 30th day of March , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Paul Burger &  
Sylvia Burger (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Paul & Sylvia Burger  
192-04 E. 71 Crescent  
Fresh Meadows, 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

30th day of March , 1972.

Lynne Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL BURGER & SYLVIA BURGER

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) 1961 & 1962 :

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 30th day of March, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Ruben Sasanow

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Ruben Sasanow  
c/o Sasanow & Gurevitch  
10 East 40th 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

30th day of March, 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A  
STATE CAMPUS  
ALBANY, N. Y. 12226

AREA CODE 518  
457-2655, 6, 7

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

March 30, 1972

Paul & Sylvia Burger  
192-04 E. 71 Crescent  
Fresh Meadows, New York

Dear Sir & Madam:

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

Please take further notice that pursuant to **sections 690 & 722**  
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 Petition :  
of :  
PAUL BURGER AND SYLVIA BURGER : 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 1961 and 1962. :

---

Petitioners, Paul Burger and Sylvia Burger, have filed a petition 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 1961 and 1962. (File No. 2-6416328). 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 January 18, 1972, at 1:15 P.M. Sasanow & Gurevitch by Reuben Sasanow appeared for petitioners. Saul Heckelman, Esq. (Francis X. Boylan, Esq. of Counsel) appeared for the Income Tax Bureau.

ISSUE

Did petitioner, Paul Burger's selling activities during the years 1961 and 1962 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Paul Burger and Sylvia Burger, filed New York State income tax resident returns for the years 1961 and 1962. They

did not file New York State unincorporated business tax returns for said years.

2. On September 13, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Paul Burger and Sylvia Burger, imposing unincorporated business tax in the sum of \$701.47 upon the income received by petitioner, Paul Burger, from his activities as a handbag salesman during the years 1961 and 1962. It also imposed additional personal income tax based upon federal audit changes in the sum of \$85.01 for the year 1961 and \$41.80 for the year 1962. These changes are not contested by petitioners, Paul Burger and Sylvia Burger. The amount due for the year 1961 in the sum of \$85.01 was paid by them. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$975.39.

3. Petitioner, Paul Burger, was a handbag salesman during the years 1961 and 1962. He represented three or four firms in the sale of handbags. Two of the firms were affiliated. The products sold by him for each firm were noncompetitive. He did not have an office or employees.

4. The firms for whom petitioner, Paul Burger, sold handbags did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him during the years 1961 and 1962. They did not cover him for unemployment insurance. He was not reimbursed for any of his business expenses, including customer cooperative advertising. He deducted these business expenses on Schedule "C" of his federal income tax returns. He

did not have a written employment contract. 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.

5. Petitioner, Sylvia Burger, was not engaged in an unincorporated business during the years 1961 and 1962.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Paul Burger, from the three or four firms that he represented during the years 1961 and 1962 constituted income from his regular business of selling handbags 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, Paul Burger, during the years 1961 and 1962 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 since petitioner, Sylvia Burger, was not engaged in an unincorporated business during the years 1961 and 1962, she was not liable for the unincorporated business tax for said years.

D. That petitioners, Paul Burger and Sylvia Burger, are liable for additional personal income tax for the years 1961 and 1962 in the sum of \$126.81 less \$85.00 heretofore paid leaving a net balance due of \$41.81.

E. That the petition of Paul Burger and Sylvia Burger is granted to the extent of reducing the Notice of Deficiency issued September 13, 1965, as against petitioner, Sylvia Burger, from \$975.39 to \$60.48 and as against petitioner, Paul Burger, from \$975.39 to \$885.59 together with such interest as may be due from September 13, 1965, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
*March 30, 1972*

STATE TAX COMMISSION

*Norman Gellman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Manley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koenig*  
\_\_\_\_\_  
COMMISSIONER