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STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

HARRY A. NOONAN & CECILE L. NOONAN

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business:  
Taxes under Article(s) 23 of the  
Tax Law for the (Year(s) 1961 & 1962:

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

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 2nd day of August , 1972 , she served the within Notice of Decision (or Determination) by (certified) mail upon Harry A. Noonan & Cecile L. Noonan (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Harry A. & Cecile L. Noonan  
179 Brixton Road  
Garden City, 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

2nd day of August , 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  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**August 2, 1972**

**Harry A. & Cecile L. Noonan**  
**179 Brixton Road**  
**Garden City, New York**

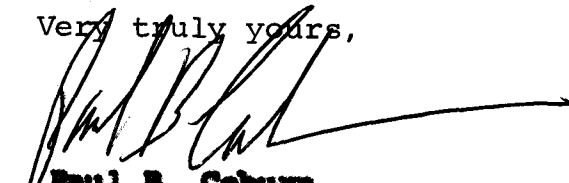
**Dear Mr. & Mrs. Noonan:**

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

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

HARRY A. NOONAN & CECILE L. NOONAN

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business  
Taxes under Article(s) 23 of the  
Tax Law for the (Year(s) 1961 & 1962 :

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

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 2nd day of August , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Milton D. Shaw, C.P.A.

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Milton D. Shaw, C.P.A.  
280 Madison Avenue  
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

2nd day of August , 1972

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
HARRY A. NOONAN AND CECILE L. :  
NOONAN : DECISION  
for Redetermination of Deficiency or :  
for Refund of Unincorporated Business :  
Tax under Article 23 of the Tax Law :  
for the Years 1961 and 1962. :  
:

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Petitioners, Harry A. Noonan and Cecile L. Noonan, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1961 and 1962. (File No. 2-3422815). A formal hearing was held before Evelyn King, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on October 30, 1967, at 10:00 A.M. Petitioners appeared by Milton D. Shaw, C.P.A.

ISSUE

Did petitioner, Harry A. Noonan's selling activities during the years 1961 and 1962 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Harry A. Noonan and Cecile L. Noonan, 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 March 1, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Harry A. Noonan and Cecile L. Noonan, imposing unincorporated business tax upon the income received by petitioner, Harry A. Noonan, from his activities as a salesman

during the years 1960, 1961 and 1962, and accordingly issued a Notice of Deficiency in the sum of \$3,799.61.

3. On May 26, 1965, the Income Tax Bureau issued a letter to petitioners, Harry A. Noonan and Cecile L. Noonan's representative cancelling that portion of the Statement of Audit Changes and Notice of Deficiency dated March 1, 1965, that related to their unincorporated business tax liability for the year 1960.

4. Petitioner, Harry A. Noonan, was a furniture salesman during the years 1961 and 1962. He represented three unaffiliated firms in the sale of furniture. The products sold by him for each firm were noncompetitive. He was free to represent other firms in noncompeting lines. He did not have any employees.

5. The firms for whom petitioner, Harry A. Noonan, sold furniture during the years 1961 and 1962 did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him. He was not covered for unemployment insurance. He was not reimbursed for any of his business expenses. He deducted these business expenses on Schedule "C" of his federal income tax returns. He maintained an office at home where he kept files and records and had the use of a telephone. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales except to limit the territory in which he could sell.

6. Petitioner, Cecile L. Noonan, was neither engaged or employed in an unincorporated business during the years 1961 and 1962.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Harry A. Noonan, from the firms he represented during the years 1961 and 1962 constituted income from his regular business of selling furniture 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, Harry A. Noonan, 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, Cecile L. Noonan, was not engaged in an unincorporated business during the years 1961 and 1962, she was not liable for unincorporated business tax for said years.

D. That the petition of Harry A. Noonan and Cecile L. Noonan, is granted to the extent of cancelling the Notice of Deficiency issued March 1, 1965, as against petitioner, Cecile L. Noonan, and, except as so granted, the petition is in all other respects denied and the Notice of Deficiency issued March 1, 1965, against petitioner, Harry A. Noonan, as modified by the letter of May 26, 1965, is sustained.

DATED: Albany, New York

*August 3, 1972*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Newbery*  
\_\_\_\_\_  
COMMISSIONER

*Milton Klein*  
\_\_\_\_\_  
COMMISSIONER