

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

Nathan Melman

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(s) 1962, 1963 & 1964.

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 19th day of September , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Nathan Melman

~~(representative of)~~ the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Nathan Melman
25 Quaker Bridge Road
Ossining, 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)~~
~~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

19th day of September , 1974.

James S. Van Patten

Janet Mack

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

NATHAN MELMAN

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(s) 1962, 1963
and 1964.

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 13th day of September , 1974 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Nathan Melman

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

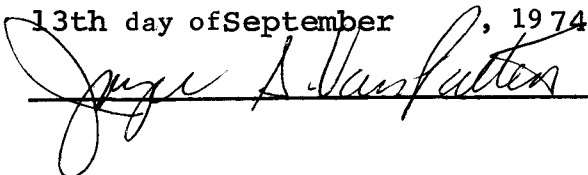
184 Pinewood Drive
Hartsdale, New York 10530


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~~
~~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

13th day of September , 1974







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

Mario A. Procaccino

~~XXXXXXXXXXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York

September 13, 1974

Mr. Nathan Melman
184 Pinewood Drive
Hartsdale, New York 10530

Dear Mr. Melman:

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

Please take further notice that pursuant to
Section(s) **22 & 23** 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 :
NATHAN MELMAN : 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, 1963 and 1964. :

Petitioner, Nathan Melman, has 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 1962, 1963 and 1964. (File # 28087983). 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 March 22, 1971, at 3:00 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq., of Counsel).

ISSUES

I. Did petitioner, Nathan Melman's selling activities during the years 1962, 1963 and 1964 constitute the carrying on of an unincorporated business?

II. Were determinations by the Income Tax Bureau that petitioner, Nathan Melman, was not liable for unincorporated business tax for the years 1953 and 1959 res judicata to a decision on substantially similar facts by the State Tax Commission for subsequent years?

FINDINGS OF FACT

1. Petitioner, Nathan Melman, and his wife filed a New York State income tax resident return for the year 1962, and New York State combined income tax resident returns for the years 1963 and 1964. He did not file New York State unincorporated business tax returns for said years.

2. On February 28, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Nathan Melman, imposing unincorporated business tax upon the income received by him as a book salesman during the years 1962, 1963 and 1964. It also made an adjustment to conform with the audit of his Federal income tax returns for the years 1962 and 1963, assessing additional personal income tax due in the total sum of \$620.24. This adjustment is not being contested by petitioner. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$2,909.02.

3. Petitioner, Nathan Melman, was a book salesman during the years 1962, 1963 and 1964. He represented seven to ten unaffiliated book publishers in the sale of books to bookstores located in the eastern United States. The books sold by him for each firm were non-competitive. He generally sold all lines to the same accounts. He did not have any employees. He did not have an equity interest in any of the publishers.

4. The firms for whom petitioner, Nathan Melman, sold books during the years 1962, 1963 and 1964, did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him. He was not reimbursed for any of his expenses by any of the firms. On Schedule "C" of his Federal income tax returns he deducted expenses incurred in connection with his sales activities. The firms for whom he sold books did not exercise any control or supervision over his sales activities or techniques or to the time devoted to sales except to limit the territory in which he could sell and to require him to call on accounts in said territory at least four times a year.

5. Petitioner, Nathan Melman, paid \$620.24 to the Income Tax Bureau on March 23, 1966. This was in payment of the additional personal income tax due for the years 1962 and 1963, resulting from the Federal audit of said returns.

6. On March 2, 1956 and June 20, 1962 respectively, the Income Tax Bureau issued notices of additional assessment imposing unincorporated business tax upon the income received by petitioner, Nathan Melman, as a book salesman during the years 1953 and 1959 respectively upon substantially the same facts as in the instant case. On December 26, 1956, and August 17, 1962 respectively the Income Tax Bureau, after a review of information submitted by him, cancelled the assessments for said years.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Nathan Melman, from the firms he represented during the years 1962, 1963 and 1964, constituted income from his regular business of selling books and not compensation as an employee exempt from the imposition of 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, Nathan Melman, during the years 1962, 1963 and 1964, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the Income Tax Bureau's determination that the petitioner, Nathan Melman, was not liable for unincorporated business taxes for the years 1953 and 1959 is not res judicata to a decision by the State Tax Commission on substantially similar facts, that he is liable for unincorporated business taxes for the years 1962, 1963 and 1964. Sundberg v Murphy 39 Misc. 2d 967, 242 N.Y.S. 2d 329 (Sup. Ct. Albany Co., 1963).


D. That the Notice of Deficiency issued February 28, 1966, should be reduced by the amount of the payment made by petitioner, Nathan Melman, on March 23, 1966.

E. That the petition of Nathan Melman is granted to the extent of reducing the Notice of Deficiency issued February 28, 1966,

from \$2,909.02 to \$2,288.78 together with such interest as may be due from February 28, 1966, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
September 13, 1974

STATE TAX COMMISSION

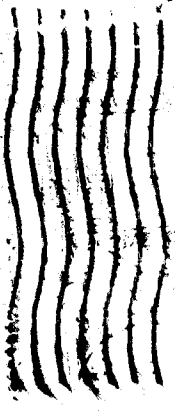

COMMISSIONER


COMMISSIONER

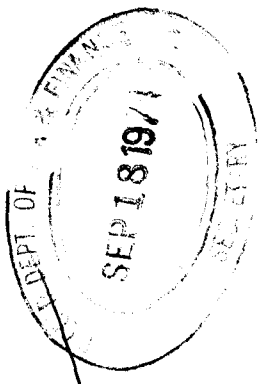

COMMISSIONER

AD-92 (6-7-79) 250M

STATE OF NEW YORK
Department of Taxation and Finance
STATE, CAMPUS
ALBANY, N. Y. 12227



Mr. Nathan Melman
184 Pinewood Drive
Hartsdale, New York



CERTIFIED
No. 201912
MAIL

063-07-1852