

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LAWRENCE E. WHITE

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

For a Redetermination of a Deficiency or  
a Refund of ~~Personal Income and~~  
~~Unincorporated Business~~ :  
Taxes under Article(s) 22 and 23 of the  
Tax Law for the Year(s) 1970 and 1971 :

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 29th day of December , 1975 , she served the within  
Notice of Decision ~~(for Determination)~~ by (certified) mail upon Lawrence E. White

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

Mr. Lawrence E. White  
215 East 68th Street  
New York, New York 10021

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

29th day of December , 1975

May G. Hoff

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LAWRENCE E. WHITE

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

For a Redetermination of a Deficiency or  
a Refund of ~~Personal Income and~~  
~~Unincorporated Business~~ :  
Taxes under Article(s) 22 and 23 of the  
Tax Law for the Year(s) 1970 and 1971 :

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 29th day of December, 1975, she served the within  
Notice of Decision (~~on Determination~~) by (certified) mail upon Sheldon Basch, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Sheldon Basch, Esq.  
184 Evandale Road  
Scarsdale, New York 10583


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

29th day of December, 1975







STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

PAUL GREENBERG  
SECRETARY TO  
COMMISSION

STATE TAX COMMISSION  
JAMES H. TULLY, JR., PRESIDENT  
MILTON KOERNER

BUILDING 9, ROOM 107  
STATE CAMPUS  
ALBANY, N.Y. 12227  
AREA CODE 518

ADDRESS YOUR REPLY TO

Mr. Wright  
Mr. Leisner  
Mr. Coburn  
(518) 457-3850

**DATED:** Albany, New York  
**December 29, 1973**

**Mr. Lawrence E. White**  
**215 East 68th Street**  
**New York, New York 10021**

**Dear Mr. White:**

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

Please take further notice that pursuant to  
Section(s) **690 and 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 E. COBURN**

HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

AD-1.12 (8/73)

## STATE TAX COMMISSION

In the Matter of the Petition :  
of :  
LAWRENCE E. WHITE :  
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 1970 and 1971. :

Petitioner, Lawrence E. White, residing at 215 East 68th Street, New York, New York 10021, 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 1970 and 1971. (File No. 1-75893316.) A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on April 24, 1975, at 9:15 A.M. Petitioner appeared by Sheldon Basch, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Solomon Sies, Esq. of counsel).

I. Did the selling activities of petitioner, Lawrence E. White, during the years 1970 and 1971 constitute the carrying on of an unincorporated business.

II. Did petitioner, Lawrence E. White, have reasonable cause for failing to file New York State unincorporated business tax

returns and timely pay New York State unincorporated business tax for the years 1970 and 1971.

FINDINGS OF FACT

1. Petitioner, Lawrence E. White, filed New York State income tax resident returns for the years 1970 and 1971. He did not file New York State unincorporated business tax returns for said years.

2. On February 26, 1973, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Lawrence E. White, imposing unincorporated business tax in the sum of \$332.29 upon the income received by him from his activities as a salesman during the years 1970 and 1971. It also imposed penalties in the sum of \$100.25 pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law. It further imposed additional personal income tax for the year 1971 in the sum of \$6.98, which assessment 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 \$464.31.

3. Petitioner, Lawrence E. White, was a dress salesman during the years 1970 and 1971. He represented three unaffiliated firms in the sale of dresses. Sales for one of the firms generated in excess of 80% of his gross commission income. The items sold for each firm were noncompetitive. He generally sold the products of the different firms to the same customers. He did not have any employees. He did not maintain an office.

4. During the years 1970 and 1971 the firms for whom petitioner, Lawrence E. White, sold dresses did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. They did not cover him for unemployment or workmen's

compensation insurance. They did not reimburse him for any of his business expenses. He deducted expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax returns. He reported his commission income as "Business Income" on his New York State income tax returns. He maintained a self-employed individual retirement plan. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his sales activities and techniques or over the time that he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, Lawrence E. White, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1970 and 1971.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Lawrence E. White, from the firms that he represented during the years 1970 and 1971 constituted income from his regular business of selling women's dresses 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, Lawrence E. White, during the years 1970 and 1971 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 petitioner, Lawrence E. White, had reasonable cause for failing to file New York State unincorporated business tax returns and timely pay New York State unincorporated business tax for the years 1970 and 1971, and, therefore, the penalties assessed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law are waived.

D. That the petition of Lawrence E. White is granted to the extent of cancelling the penalties imposed pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the years 1970 and 1971 in the sum of \$100.25; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued February 26, 1973, and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
December 29, 1975

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

\_\_\_\_\_  
COMMISSIONER