

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DONALD FLASTER AND ROSE FLASTER

AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund :  
of Personal Income & Unincorporated:Business :  
Taxes under Article(s) 22 & 23 of the :  
Tax Law for the Year(s) ~~or Period(s)~~ :  
1969, 1970 and 1971.

State of New York  
County of Albany

Donna Scranton, 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 6th day of August, 1976, she served the within Notice of Decision by (certified) mail upon Donald and Rose Flaster (~~representative of~~) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. and Mrs. Donald Flaster  
42 Baker Hill Road  
Great Neck, New York 11023  
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 Postal Service within the State of New York.

That deponent further says that the said addressee is the ~~representative of the~~ 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

6th day of August, 1976.

Donna Scranton

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of  
DONALD FLASTER AND ROSE FLASTER : AFFIDAVIT OF MAILING

For a Redetermination of a Deficiency or :  
a Revision of a Determination or a Refund  
of Personal Income and Unincorporated Business  
Taxes under Article(s) 22 & 23 of the  
Tax Law for the Year(s) ~~xxx~~ ~~xxxx~~ ~~xxxx~~ ~~xxxx~~ :  
1969, 1970 and 1971.

State of New York  
County of Albany

Donna Scranton , 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 6th day of August , 19 76, she served the within  
Notice of Decision by (certified) mail upon Lawrence J.  
Mittenthal, Esq (representative of) the petitioner in the within proceeding,  
by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed  
as follows: Lawrence J. Mittenthal, Esq.  
275 Madison Avenue  
New York, New York 10016

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 Postal Service within the State of New York.

That deponent further says that the said addressee is the (representative  
of the) 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

6th day of August , 19 76

Donna Scranton

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

TAX APPEALS BUREAU  
STATE CAMPUS  
ALBANY, N.Y. 12227

STATE TAX COMMISSION

ADDRESS YOUR REPLY TO

August 6, 1976

TELEPHONE: (518) **457-3850**

Mr. and Mrs. Donald Flaster  
42 Baker Hill Road  
Great Neck, New York 11023

Dear Mr. and Mrs. Flaster:

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

Please take further notice that pursuant to  
Section(s) **690 & 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.

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. They  
will be referred to the proper party for reply.

Very truly yours,

**PAUL B. COBURN**  
SUPERVISING TAX  
HEARING OFFICER

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
DONALD FLASTER and ROSE FLASTER	:	DECISION
	:	
for Redetermination of a Deficiency or	:	
for Refund of Personal Income and	:	
Unincorporated Business Taxes under	:	
Articles 22 and 23 of the Tax Law for	:	
the Years 1969, 1970 and 1971.	:	

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Petitioners, Donald Flaster and Rose Flaster, residing at 42 Baker Hill Road, Great Neck, New York, have filed a petition for redetermination of a deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1969, 1970 and 1971 (File Nos. 0-58856063 and 1-78913305). 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 May 21, 1975, at 9:30 a.m. Petitioners appeared by Lawrence J. Mittenthal, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq. (James Scott, Esq. of counsel).

ISSUES

I. Did petitioner, Donald Flaster, alone or as a joint venture with his wife, petitioner Rose Flaster, engage in an unincorporated business during the years 1969, 1970 and 1971?

II. If they conducted such a business, how should the income thereof be divided between them for those years?

III. If they engaged in such a business during those years, should any penalties be imposed for their failure to file unincorporated business tax returns with respect to that business?

FINDINGS OF FACT

1. Petitioners, Donald Flaster and Rose Flaster, filed New York State combined income tax returns for the years 1969, 1970 and 1971. They reported joint salary income of \$43,715.87 for 1969, \$49,067.54 for 1970 and \$42,058.20 for 1971. They divided the joint amounts of income equally. They each listed their occupation on said returns as "traveling salesman". They did not file New York State unincorporated business tax returns for said years.

2. On January 28, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Donald Flaster and Rose Flaster, imposing additional personal income taxes for

the year 1969 in the sum of \$1,235.08 and for the year 1970 in the sum of \$1,211.08 upon the grounds that none of the income received as commissions was attributable to Rose Flaster and could not, therefore, be split between them. It also imposed unincorporated business tax for the year 1969 in the sum of \$2,032.17 and for the year 1970 in the sum of \$1,718.86 upon the commission income received by petitioner, Donald Flaster. It further imposed penalties pursuant to sections 685(a)(1) and 685(a)(2) of the Tax Law for the year 1969 in the sum of \$833.19 and for the year 1970 in the sum of \$601.61, for failure to file unincorporated business tax returns and pay unincorporated business tax for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$9,013.79.

3. On June 24, 1974, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Donald Flaster and Rose Flaster, imposing additional personal income tax for the year 1971 in the sum of \$1,440.01 on the grounds that none of the income reported as commissions was attributable to petitioner, Rose Flaster, and could not be split between them. It also imposed unincorporated business tax for the year 1971 in the sum of \$2,148.71 upon the commission income received by

Donald Flaster. It further imposed penalties pursuant to section 685(a)(1) and section 685(a)(2) of the Tax Law for the year 1971 in the sum of \$773.54 for failure to file an unincorporated business tax return and pay unincorporated business tax for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$4,834.07.

4. During the years 1969, 1970 and 1971, petitioner, Donald Flaster, was a traveling salesman of lingerie for Miss Elaine, the trade name for Sel Mor Garment Co. Inc. of St. Louis, Missouri, by written agreement with that firm dated November 23, 1956.

5. By an agreement prior to 1956 with Lisanne, Inc. a New York company, he had been engaged in selling lounge wear for that firm during the years in issue. He continued to represent and sell their line after his contract with Miss Elaine, which concurrent business activity was expressly agreed to by Miss Lisanne and Miss Elaine, their respective products being considered non-competitive.

6. After July 1964, due to a heart attack which prevented petitioner, Donald Flaster, from working for six weeks, he began taking his wife, Rose, the co-petitioner, on his selling trips

and she worked regularly with him on a daily basis, particularly in carrying luggage and samples back and forth. She also aided in selling and did a substantial part of the record keeping and bookkeeping.

7. Petitioner, Donald Flaster, was remunerated for his services to Miss Elaine and to Lisanne by commissions on the sales that he effected for each respectively. Neither firm paid any of his traveling or selling expenses. 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 he devoted to sales, except to limit the territory in which he could sell.

8. During the years 1969, 1970 and 1971, petitioner, Donald Flaster, engaged a subordinate salesman, one Irving Dentz, with respect to both lines to whom he paid a salary and all his selling expenses, which payments petitioner, Donald Flaster, charged as business expenses on his tax returns.

9. Petitioners, Donald Flaster and Rose Flaster, were advised by their accountant that they were not required to file unincorporated business tax returns for the years in issue.

#### CONCLUSIONS OF LAW

A. That the income received by petitioners, Donald Flaster and Rose Flaster, from firms which they represented during the



years 1969, 1970 and 1971 constituted income from their regular business of selling lingerie and lounge wear and not compensation as employees 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 petitioners, Donald Flaster and Rose Flaster, during the years 1969, 1970 and 1971 constituted the carrying on of an unincorporated business and their 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 claim of petitioner, Rose Flaster, to a separate share of the net income of said unincorporated business for her work in the business is fixed at one-third thereof for each of the years 1969, 1970 and 1971.

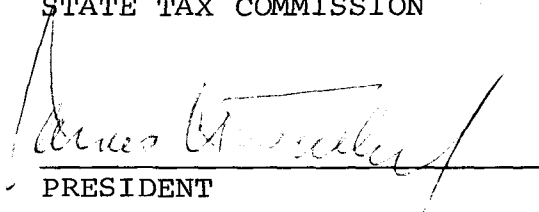
D. That the petitioners, Donald Flaster and Rose Flaster, had reasonable cause for not filing unincorporated business tax returns for the years 1969, 1970 and 1971 and, therefore, the penalties assessed pursuant to section 685(a)(1) and 685(a)(2) of the Tax Law are waived.

E. That the petition of Donald Flaster and Rose Flaster is granted to the extent that the net income of the unincorporated business carried on by petitioners, Donald Flaster


and Rose Flaster, in the years 1969, 1970 and 1971 is deemed earned jointly by both petitioners, two-thirds thereof by petitioner, Donald Flaster, and one-third thereof by petitioner, Rose Flaster; that the penalties imposed by section 685(a)(1) and section 685(a)(2) of the Tax Law in the sum of \$833.19 for the year 1969, in the sum of \$601.61 for the year 1970 and in the sum of \$773.54 for the year 1971 are cancelled; that their personal income and unincorporated business taxes for those years be recomputed accordingly; and that, except as so granted, the petition is in all other respect denied.

DATED: Albany, New York  
August 6, 1976

STATE TAX COMMISSION



PRESIDENT



COMMISSIONER



COMMISSIONER