

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID BUCHALTER AND MILDRED BUCHALTER

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 (e)~~ 1969 :

State of New York
County of Albany

Bruce Batchelor , 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 8th day of April , 1977 , she served the within
Notice of Decision by (certified) mail upon David and Mildred
Buchalter (~~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. David Buchalter
12 Harbor Terrace
Perth Amboy, New Jersey
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

8th day of April , 1977.

Bruce Batchelor

Janet Trach

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID BUCHALTER AND MILDRED BUCHALTER

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(x) ~~or Period(s)~~ --1969:

State of New York
County of Albany

Bruce Batchelor , 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 8th day of April , 1977 , she served the within
Notice of Decision by (certified) mail upon Bernard Buchalter

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

Bernard Buchalter, CPA
1916 Ocean Parkway
Brooklyn, NY 11223

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

8th day of April , 19 77

Bruce Batchelor

Janet Mack



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

TAX APPEALS BUREAU

STATE CAMPUS
ALBANY, N.Y. 12227

ADDRESS YOUR REPLY TO

April 8, 1977

TELEPHONE: (518) **457-1723**

Mr. and Mrs. David Buchalter
12 Harbor Terrace
Perth Amboy, New Jersey

Dear Mr. and Mrs. Buchalter:

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

Please take further notice that pursuant to
Section ~~690~~ **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,

Frank J. Puccia
Supervisor of Small
Claims Hearings

Enc.

cc: Petitioner's Representative:

Taxing Bureau's Representative:

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
DAVID BUCHALTER and MILDRED BUCHALTER :
for Redetermination of a Deficiency or :
for Refund of Personal Income Taxes :
under Article 22 of the Tax Law for :
the Year 1969. :

DECISION

In the Matter of the Petition :
of :
DAVID BUCHALTER :
for Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law :
for the Year 1969. :

DECISION

Petitioners, David Buchalter and Mildred Buchalter,
residing at 12 Harbor Terrace, Perth Amboy, New Jersey, have
filed a petition for redetermination of a deficiency or for
refund of personal income taxes under Article 22 of the Tax
Law for the year 1969 (File No. 9-48018767).

Petitioner, David Buchalter, has filed a petition for
redetermination of a deficiency or for refund of unincorporated

business taxes under Article 23 of the Tax Law for the year 1969 (File No. 9-48018767).

A small claims hearing was held before Joseph A. Milack, Small Claims Hearing Officer, on August 20, 1976 at 9:15 a.m. at the offices of the State Tax Commission, Two World Trade Center, New York, New York. The petitioners appeared by Bernard Buchalter, C.P.A. The Income Tax Bureau appeared by Peter Crotty, Esq. (Frank Levitt, Esq. of counsel).

ISSUES

I. Whether petitioners, David Buchalter and Mildred Buchalter, are entitled to a business loss deduction incurred in connection with the rental of a portion of their home to their daughter?

II. Whether petitioners, David Buchalter and Mildred Buchalter, properly deducted amounts claimed as travel, entertainment and other business expenses?

III. Whether petitioners, David Buchalter and Mildred Buchalter, properly reported dividend income, interest income and income from the sale or exchange of property?

IV. Whether petitioner, David Buchalter's selling activities during the year 1969 constituted the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, David Buchalter and Mildred Buchalter, residents of New York State during 1969, filed a New York State combined income tax return for the year 1969. Petitioner, David Buchalter, did not file a New York State unincorporated business tax return for said year.

2. On January 5, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, David Buchalter and Mildred Buchalter, imposing additional income tax due as a result of an examination of their New York State combined income tax return for the year 1969. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$839.02.

3. On January 5, 1972, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, David Buchalter, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the year 1969. It also imposed a penalty of \$202.59 for failure to file a New York State unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,254.14.

4. The Income Tax Bureau conducted an examination of petitioners, David Buchalter's and Mildred Buchalter's combined income tax return for the year 1969. As a result of said examination, adjustments were made as follows:

(a). Rental loss claimed by the petitioners was disallowed since the tenant was their daughter and it was deemed not a transaction entered into for profit.

(b). Travel, entertainment and other business expenses claimed by the petitioners in the amount of \$12,443.70 were disallowed to the extent of \$4,038.20 due to lack of substantiation.

(c). Dividend income and interest income reported by Mildred Buchalter and income from the sale or exchange of property reported by David Buchalter was apportioned equally between the petitioners, since no substantiation was presented to indicate that said income was not earned jointly.

5. Documentary evidence submitted by petitioners, David Buchalter's and Mildred Buchalter's representative was limited to a diary that solely indicated David Buchalter's daily sales. No other documentary evidence was submitted.

6. During the year 1969, petitioner, David Buchalter, was a salesman of gift and novelty items, representing fifteen unaffiliated firms. The products he sold for these firms were both competitive and noncompetitive.

7. During the year 1969, the firms for whom petitioner, David Buchalter, sold for did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. He deducted expenses incurred in connection with his sales activities from his gross commissions income on his Federal income tax return. 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.

CONCLUSIONS OF LAW

A. That petitioners, David Buchalter and Mildred Buchalter, failed to sustain the burden of proof necessary to establish that the rental of a portion of their home to their daughter was a transaction entered into for profit.

B. That petitioners, David Buchalter and Mildred Buchalter, failed to sustain the burden of proof necessary to establish that the amounts claimed as travel, entertainment and other business expenses were proper.

C. That petitioners, David Buchalter and Mildred Buchalter, failed to sustain the burden of proof necessary to establish that dividend income, interest income and income from the sale or exchange of property was not income earned jointly.

D. That the income received by petitioner, David Buchalter, from the firms he represented during the year 1969 constituted income from his regular business of selling merchandise as an independent contractor 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.

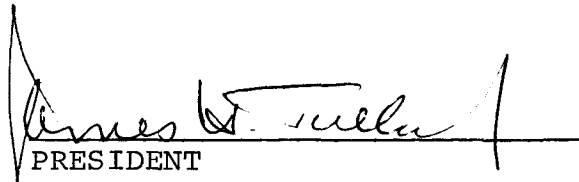
E. That the activities of petitioner, David Buchalter, during the year 1969 constituted the carrying on of an unincorporated business and his income derived therefrom is subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

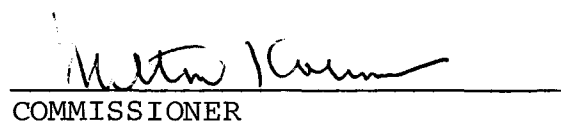
F. That the petition of David Buchalter and Mildred Buchalter is denied and the Notice of Deficiency issued on March 31, 1975 is sustained.

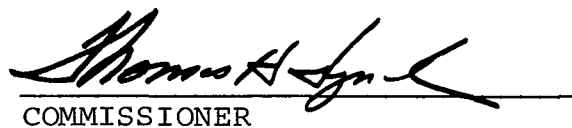
G. That the petition of David Buchalter is denied and the Notice of Deficiency issued on March 31, 1975 is sustained.

DATED: Albany, New York
April 8, 1977

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER