

Unincorp Bus Tax Determination
BUREAU OF LAW

MEMORANDUM *Buchsbaum, Isadore* A-2

TO: **Commissioners Murphy, MacLuff and Conlan**

FROM: **Martin Schapiro, Hearing Officer**

SUBJECT: **Isadore Buchsbaum**

Petition for redetermination of a deficiency of unincorporated business taxes under Article 23 of the Tax Law for the years 1960, 1961, 1962 and 1963

A hearing with reference to the above matters was held before me at 80 Centre Street, New York, New York on May 5, 1966. The appearances and the evidence produced were as shown in the stenographic minutes and exhibits submitted herewith.

The primary issue herein is whether or not the commission income of the taxpayer, a multiple line salesman, is subject to the unincorporated business tax.

A notice of deficiency was issued against the taxpayer for the above years for the sum of \$1,134.51 on the ground that the taxpayer had failed to report unincorporated business tax returns for such years.

The facts herein are as follows:

The taxpayer is a salesman for various fur trimming manufacturers, each of which produces slightly different lines of fur trimming. These are sold to various clothing manufacturers who require such trimmings in the manufacture of clothing. The taxpayer is on a commission basis with each of his principals and admits that he is not an employee but an independent contractor. The principals do not deduct withholding or social security taxes or unemployment insurance. There does not appear to be any control or supervision by the principals with respect to the taxpayer's time or specific methods of making sales. The taxpayer is known throughout the fur industry as a sales representative of fur trimmings and has no need for any advertisement. The taxpayer has no office, nor does he take any deductions for the use of his home. His stationery simply lists him as a sales representative at his home address. He does not have any inventory. The taxpayer has the usual expenses of automobile, periodicals, telephone, entertainment, and business gifts which are not reimbursed by any of the principals. He maintains a telephone answering service during the summer months when he is away on vacation.

The primary question herein is whether or not the taxpayer who acknowledges himself to be an independent sales agent is nevertheless subject to the unincorporated business tax. In the case of George E. Britton v. Murby, 22 A B 24 907, recently affirmed by the Court of Appeals without opinion, it was held that a multiple line salesman for eleven principals was subject to the unincorporated business tax. Although in that case it was found that the salesman had an office in his home, the other elements which are similar to the facts in this case support the conclusion that the taxpayer in the instant matter is also carrying on a business.

The proposition urged by the taxpayer that although he is not an employee but an independent sales agent, he is nevertheless not subject to unincorporated business taxes, is not supported by any of the cases. A finding that the taxpayer is not an employee but an independent contractor is sufficient to subject him in the first instance to unincorporated business taxes. See Smith v. Bussalini, 17 A B 24 15 and Hickish v. Bussalini, 270 App. Div. 774 aff'd 296 N. Y. 720.

I have, therefore, prepared a proposed determination holding that the taxpayer's income was subject to unincorporated business taxes, and denying the relief requested in the petition.

If you agree, kindly sign one original and three copies of the determination and return the same together with the entire file to the Lev Bureau for further disposition.

/s/

MARTIN SCHAPIRO

Hearing Officer

February 14, 1967

MS:cp
Enc.

3-2-67

STATE OF NEW YORK

STATE TAX COMMISSION

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IN THE MATTER OF THE PETITION

OF

ISADORE BUCHSBAUM

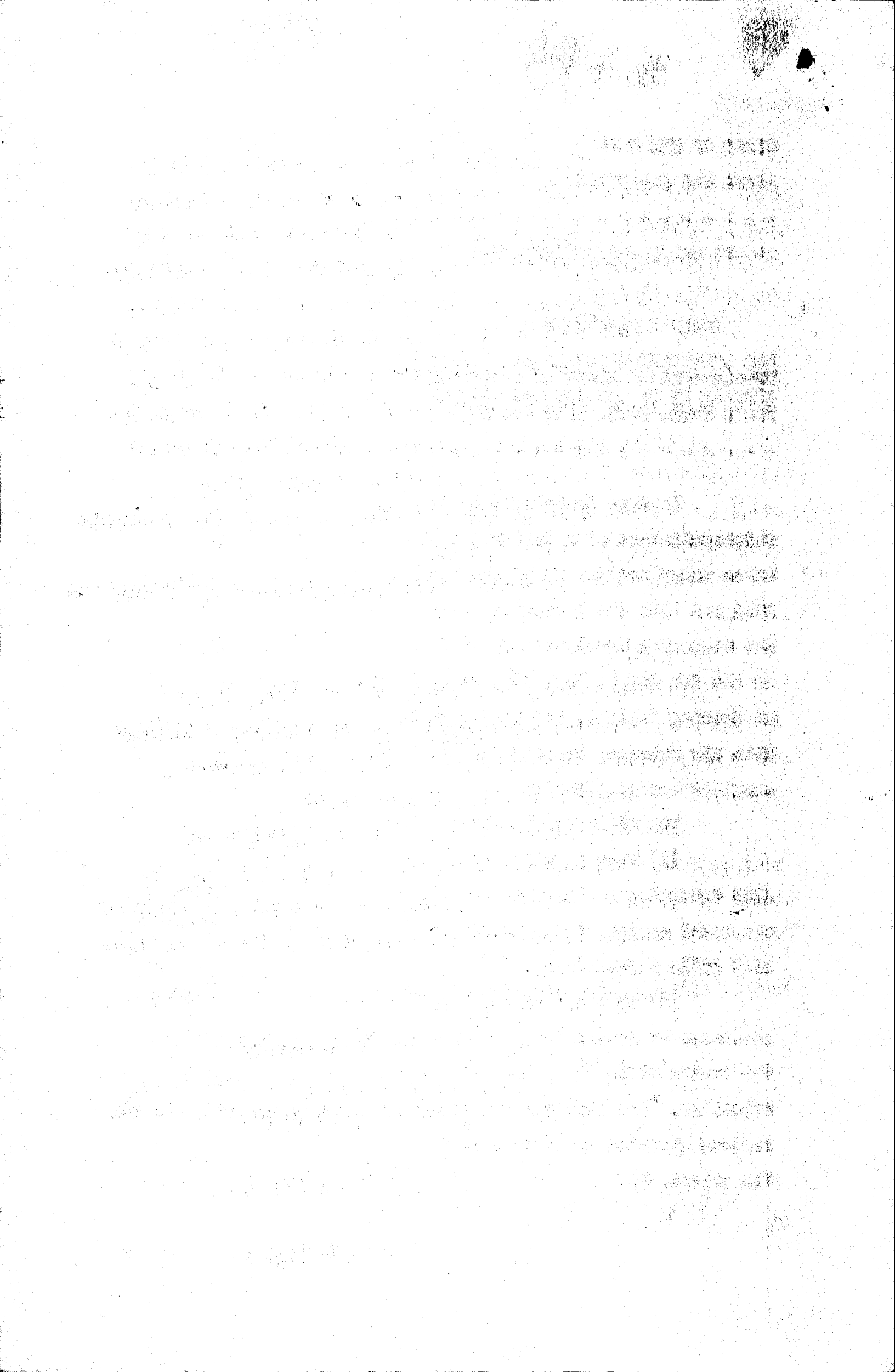
FOR REDETERMINATION OF DEFICIENCY OF
UNINCORPORATED BUSINESS TAXES UNDER
ARTICLE 23 OF THE TAX LAW FOR THE
YEARS 1960, 1961, 1962 AND 1963
.....

Isadore Buchsbaum, having filed a petition for redetermination of a deficiency of unincorporated business taxes under Article 23 of the Tax Law for the years 1960, 1961, 1962 and 1963 and a hearing having been held at the office of the State Tax Commission at 60 Centre Street, New York, New York on the 5th day of May, 1966 at 2:00 P.M. before Martin Schapiro as Hearing Officer, and the taxpayer having appeared together with his attorney Stanley Bucher, Esq., the matter having been examined and considered,

The State Tax Commission hereby finds:

(1) That a notice of deficiency was issued on October 11, 1965 determining a deficiency of unincorporated business taxes in the total amount of \$1,167.89 for the years 1960, 1961, 1962 and 1963 (file # 3-5828)30).

(2) That during the years involved the taxpayer's income consisted of commissions received by him as a sales representative for twelve different principals engaged in the manufacture of fur trimmings. The taxpayer solicited and received orders from various clothing manufacturers at terms and prices established by the principals.



(3) That the taxpayer deducted on his personal income tax returns the expenses of telephone, entertainment, business gifts, periodicals and postage and New York City business tax which expenses were incurred in the production of his commission income and which were not reimbursed by any of the principals.

(4) That none of the principals deducted withholding or social security taxes; that there was no control by any of his principals of the taxpayer with respect to the time spent or the manner of making sales; that none of the principals supervised the activities of the taxpayer; that the taxpayer was an independent contractor and not an employee of any of his principals as conceded by him in his petition.

Based upon the foregoing findings, the State Tax Commission hereby

DECIDES:

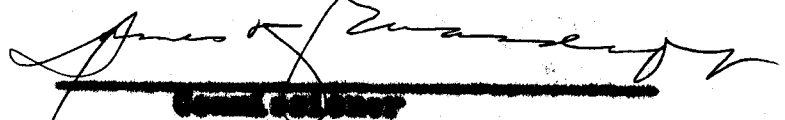
(A) That during 1960, 1961, 1962 and 1963, the years involved, the taxpayer was engaged in an unincorporated business and unincorporated business taxes were therefore properly determined to be due and owing for such years.

(B) That, accordingly the taxpayer's petition for redetermination of a deficiency is hereby denied and that the taxes set forth in the determination of a deficiency are lawfully due and owing together with interest and other statutory charges.

DATED: Albany, New York on the 13th day of April, 1967.

STATE TAX COMMISSION

/s/ JOSEPH H. MURPHY
President


Commissioner

/s/ WALTER MACLYN CONLON
Commissioner

