

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

Alpert & Cohen Associates

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business  
Taxes under Article(s) 23 of the  
Tax Law for the (Year(s) 1962 & 1964 :

116-1-23  
1970  
AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Martha Funaro , 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 , 19 70, she served the within Notice of Decision (or Determination) by (certified) mail upon Alpert & Cohen Associates (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Robert S. Braunschweig  
101 Park Avenue  
New York, New York 10017

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 , 1970.

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

Alpert & Cohen Associates

For a Redetermination of a Deficiency or  
a Refund of Unincorporated Business,  
Taxes under Article(s) 23 of the  
Tax Law for the (Year(s) 1962 & 1964 :

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

State of New York  
County of Albany

Martha Funaro , 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 , 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Alpert & Cohen Associates (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Alpert & Cohen Associates  
1370 Broadway  
New York, 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) 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 , 1970.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition

of

ALPERT & COHEN ASSOCIATES

DECISION

For Redetermination of Deficiency or  
For Refund of Unincorporated Business  
Taxes under Article 23 of the  
Tax Law for the years 1962 and 1964

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Petitioner, Alpert & Cohen Associates, 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 years 1962 and 1964. (File #72). 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 September 21, 1970 at 1:15 P.M. Petitioner appeared by Robert S. Braunschweig, Esq. (Robert Louis Cohen, Esq. of counsel). The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of counsel).

FINDINGS OF FACT

1. Petitioner, Alpert & Cohen Associates, did not file New York State Income Tax and Unincorporated Business Tax Partnership Return's for the years 1962 and 1964 until February 1, 1967. On these returns it did not report any unincorporated business tax due upon the grounds that it was not conducting a taxable unincorporated business as defined in Section 703(f) of the Tax Law.

2. On September 25, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Alpert & Cohen Associates, imposing unincorporated business tax upon the income received by it from its business activities during the years 1962 and 1964, upon the grounds that its business activities were

subject to unincorporated business tax and also imposing a penalty pursuant to section 685(a) of the Tax Law and accordingly issued a Notice of Deficiency therefor, as amended by letter of December 15, 1967, in the sum of \$4,169.00, of which \$2,165.85, had been previously paid, leaving a balance due of \$2,003.15. Included in the Notice of Deficiency was a penalty of \$265.83, for the year of 1962 and a penalty of \$477.06 for the year 1964.

3. Petitioner, Alpert & Cohen Associates during the years 1962 and 1964 was a manufacturer's representative for a manufacturer of swim suits and a manufacturer of sweaters.

4. Petitioner, Alpert & Cohen Associates, did not report any unincorporated business taxes due for the years 1962 and 1964 in reliance on the advice of its attorney and accountant.

5. Petitioner, Alpert & Cohen Associates, in its petition and at the formal hearing, conceded that its business activities during the years of 1962 and 1964 were of a type subject to unincorporated business tax.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Alpert & Cohen Associates, from its business activities during the year 1962 and 1964 constituted receipts from its regular business of selling swim suits and sweaters and therefore, the income derived therefrom was subject to unincorporated business tax in accordance with meaning and intent of Section 703(f) of the Tax Law.

B. That since petitioner, Alpert & Cohen Associates, filed its New York State Income Tax and Unincorporated Business Tax Partnership Return for the year 1962 on February 1, 1967, therefore the Notice of Deficiency for the year 1962 issued September

25, 1967 was timely issued in accordance with the meaning and intent of Section 683 (a) of the Tax Law.

C. That petitioner, Alpert & Cohen Associates, had reasonable cause for not reporting any unincorporated business tax due for the year 1962 and 1964 and therefore, the penalty assessed pursuant to Section 685 (a) of the Tax Law is waived.

D. That the petition of Alpert & Cohen Associates is granted to the extent of cancelling penalties imposed pursuant to Section 685 (a) of the Tax Law, for the years 1962 and 1964 in the total sum of \$729.11 and the Notice of Deficiency issued September 25, 1967, as amended by letter of December 15, 1967, is reduced from \$4,169.00 to \$3,439.89 and the balance still due after giving credit for payments by petitioner of \$2,165.85, is \$1,274.04 plus such interest as may be due from September 25, 1967 and except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
*December 28, 1970.*

STATE TAX COMMISSION

*Upmanu Gulchman*  
COMMISSIONER

*Bruce Manley*  
COMMISSIONER

*Milton Kravner*  
COMMISSIONER