

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
BRUNO & ELLA BIEDERMAN

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) 1961 & 1962 :

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

State of New York
County of Albany

Lynn Puerto , 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 26th day of March , 19 70, she served the within
Notice of Decision (or Determination) by (certified) mail upon ~~EXH~~ Jacob
Simon CPA (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jacob Simon CPA
6 East 45th Street
New York City 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

26th day of March , 19 70

Frank Wright

Lynn Puerto

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cc H
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BRUNO & ELLA BIEDERMAN

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Taxes under Article(s) 23 of the
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State of New York
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Lynn Puerto

, 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 26th day of March , 1970 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Bruno and

Ella Biederman (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

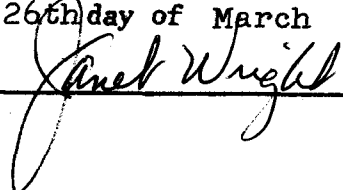
wrapper addressed as follows: Bruno and Ella Biederman
21-35 Normandy Drive
Miami Beach, Florida 3341


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

26th day of March , 1970.





STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BRUNO and ELLA BIEDERMAN	:	
for Redetermination of a Deficiency or	:	DECISION
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the years 1961 and 1962	:	

Mr. Bruno Biederman, and his wife Mrs. Ella Biederman, filed claims for refund of Unincorporated Business Taxes for the years 1961 and 1962.

A formal hearing was held in the offices of the State Tax Commission in the city of New York on October 28, 1969, before Lawrence A. Newman, Hearing Officer. The claimants appeared through Jacob L. Simon, CPA and the Income Tax Bureau was represented by Edward H. Best, Esq. (Albert J. Rossi, Esq. of counsel).

FINDINGS OF FACT

1. The claimants, Bruno and Ella Biederman, filed New York State Income Tax resident returns for the years 1961 and 1962 but did not file Unincorporated Business Tax returns.

2. On March 14, 1966, a notice of deficiency was issued by the Income Tax Bureau under filed numbered 2-6146073. The notice contained a statement of tax deficiency of \$434.92 for the year 1961, and \$251.40 for the year 1962, plus statutory interest. The Income Tax Bureau contended that the income from the business activities of Mr. Bruno Biederman was subject to the Unincorporated Business Tax.

3. The claimants paid the amounts of the deficiencies and timely filed claims for credit or refund for the years 1961 and 1962.

4. At the specific request and instruction of Schmidt and Koch, an importing firm located in West Germany, Mr. Biederman would report and advise on the purchase of heavy equipment from American manufacturers for export to Europe. Mr. Biederman was paid a commission by Schmidt and Koch based upon the value of the purchases without any deductions for income taxes or social security. In addition, Schmidt and Koch reimbursed Mr. Biederman for certain categories of travel expenses. The firm did not, however, restrict his movements nor dictate the companies and locations that Mr. Biederman could visit. Schmidt and Koch made the ultimate decision on equipment purchases based upon Mr. Biederman's findings.

5. The claimants included Schedule C, profit from business or profession, as part of their federal income tax returns for the years 1961 and 1962. Mr. Biederman's activities were described as "traveling foreign sales representative." The receipts were similarly listed as business income on the corresponding New York State income tax returns.

Business deductions were claimed for expenses such as accounting services, gifts, travel, stationery and office expense (portion of residence).

6. The evidence and the testimony of the petitioner's accountant have failed to prove that the principals, Schmidt and Koch, exercised a degree of direction and control, consistent with an employment relationship, over the activities of Mr. Biederman.

The testimony offered has failed to establish that Mr. Biederman's activities were exclusively on behalf of his principals, Schmidt and Koch.

7. Mr. Bruno Biederman was not an employee of the firm of Schmidt and Koch, and was engaged in an unincorporated business during the years 1961 and 1962.

DECISION

A. The net income from the business activities of Mr. Bruno Biederman for the years 1961 and 1962 is subject to the Unincorporated Business Tax.

B. The claims for refund of Bruno and Ella Biederman for the years 1961 and 1962 are denied.

Dated: Albany, New York, this *24th* day of *March* 1970.

STATE TAX COMMISSION

Norman Gallman
PRESIDENT

Bruce Mauley
COMMISSIONER

Milton Koenig
COMMISSIONER