

STATE OF NEW YORK
STATE TAX COMMISSION

Zucker, J.

*UBT
1970*

In the Matter of the Petition

of

Julius Zucker & Mildred
Zucker

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

Diane Farrington , 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 20th day of November , 1970, she served the within Notice of Decision (or Determination) by (certified) mail upon Julius and Mildred Zucker (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Julius & Mildred Zucker
411 Seagate Avenue
Brooklyn, 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

20th day of November , 1970

John Wright

Diane Farrington

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

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Zucker

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3826 Cypress Avenue
Brooklyn, 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

20th day of November , 19 70

Janet Wright

Diane Farrington

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULIUS ZUCKER AND MILDRED
ZUCKER

DECISION

for a Redetermination of a Deficiency
or for Refund of Unincorporated Business
Taxes under Article 23 of the Tax Law
for the Years 1961 and 1962

Petitioners, Julius Zucker and Mildred Zucker have filed a petition for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962. (File #2-3153852) A formal hearing was held before Francis X. Boylan, Hearing Officer, on February 20, 1970 at 9:30 A.M. at the offices of the State Tax Commission, 80 Centre Street, New York, New York. Petitioner, Julius Zucker, appeared in person. The Income Tax Bureau appeared by Edward H. Best, Esq. (Solomon Sies, Esq., of counsel).

FINDINGS OF FACT

1. Petitioners, Julius Zucker and Mildred Zucker, filed joint New York State income tax resident returns for the years 1961 and 1962. They did not file any unincorporated business tax returns for the years 1961 and 1962.

2. On May 10, 1965 the Income Tax Bureau issued a statement of audit changes against petitioners imposing unincorporated business tax upon the income received by petitioner, Julius Zucker, from his sales activities during 1961 and 1962 upon the ground that his sales activities constituted the carrying on of an unincorporated business in accordance with the provisions of Article 23 of the Tax Law, and accordingly issued a notice of deficiency therefor in the sum of \$728.40.

3. Petitioner, Julius Zucker represented two unaffiliated principals in the sale of sportswear. They were the Peters Sportswear Co., and Carlton Shirt Company, Inc.; Carlton withheld income and social security taxes from the compensation paid to him. He on occasion assisted Carlton in the styling and buying of merchandise. He had no assistants. He maintained a room in his home for the storage of records and samples.

4. Peters considered petitioner, Julius Zucker, to be an independent agent and not an employee. It did not withhold income and social security taxes from the compensation paid to him. Petitioner was not given any leads by either of his principals. The only restriction on his sales activities was a limitation on the geographical area in which he could sell. He was not reimbursed for any expenses incurred including expenses for trade shows he conducted. He did not have to file any reports as to his activities with his principals. On Schedule "C" of his 1961 and 1962 federal income tax returns he deducted business expenses for hotels and meals, customers lunches, telephone, exhibition fees for trade shows and the use of his room at home.

CONCLUSIONS OF LAW

A. That petitioner, Julius Zucker's representation of more than one principal and the maintenance in his home of a room for the storage of samples and records during the years 1961 and 1962 did not in and of itself constitute the carrying on of an unincorporated business in accordance with the intent and meaning of Section 703(f) of the Tax Law.

B. That the income received by petitioner, Julius Zucker, from his two principals during the years 1961 and 1962 constituted receipts from his regular business of selling sportswear and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the intent and meaning of Section 703(b) of the Tax Law.

C. That the aforesaid activities of petitioner, Julius Zucker, during the years 1961 and 1962 constituted the carrying on of an unincorporated business and that his income derived therefrom was subject to unincorporated business tax in accordance with the intent and meaning of Section 703 of the Tax Law.

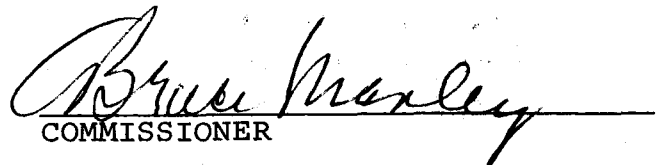
D. That the petition of Julius Zucker and Mildred Zucker for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1961 and 1962 is denied and the notice of deficiency issued May 10, 1965 against petitioners, Julius Zucker and Mildred Zucker, is sustained.

DATED: Albany, New York
November 18, 1970

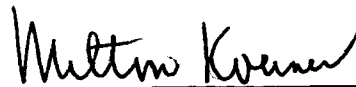
STATE TAX COMMISSION



COMMISSIONER



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