

STATE OF NEW YORK  
STATE TAX COMMISSION

*Becker, Ludwig E.  
J.B.T. Article 23  
1971*

In the Matter of the Petition

of

LUDWIG E. BECKER

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) 1963, 1964  
and 1965

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

State of New York  
County of Albany

Linda Wilson, 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 1st day of March, 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon LUDWIG E.

BECKER (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Ludwig E. Becker  
RD #3 Pheasant Lane  
Huntington, 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

1st day of March, 1971.

*Handwritten signature*

*Linda Wilson*

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
LUDWIG E. BECKER : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Unincorporated Busi- :  
ness Taxes under Article 23 of the Tax :  
Law for the years 1963, 1964 and 1965 :  
:

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Petitioner, Ludwig E. Becker, 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 1963, 1964 and 1965 (file numbered 46207252). A formal hearing was held before Francis X. Boylan, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on April 9, 1970, at 1:40 p.m. Petitioner appeared in person. The Income Tax Bureau appeared by Edward H. Best, Esq. (Solomon Sies, Esq. of counsel).

FINDINGS OF FACT

1. Petitioner, Ludwig Becker, and his wife filed joint New York State Income Tax Resident Returns for the years 1963, 1964 and 1965. He did not file any unincorporated business tax returns for those years.

2. On January 22, 1968, the Income Tax Bureau issued a statement of audit changes against petitioner, imposing unincorporated business taxes upon the business income received by him from his activities as a salesman during the years 1963, 1964 and 1965 upon the grounds that these 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 \$1912.36.

3. Petitioner, Ludwig E. Becker, was a cutlery salesman during the years 1961 through 1965. During these years he was president and a majority stockholder of F. W. Engel, Inc. for whom he sold cutlery. In addition he sold cutlery for R. H. Forschner Co., Inc. On May 10, 1967, the State Tax Commission determined that the salary he received during 1961 and 1962 from F. W. Engel, Inc. for administrative duties was not subject to unincorporated business taxes but that income received from the two companies as commissions were subject to said taxes. The statement of audit changes of January 22, 1968, imposed taxes only on the business income received as commissions and excluded income received as salary in accordance with the May 10, 1967, determination of the State Tax Commission. He made no sales within New York State. The items he sold were non-competitive. He had no employees. He flew to the territory where his automobile was located and then went out on the road.

4. During the years 1963 through 1965 the firms for whom petitioner sold merchandise did not withhold federal or New York State income taxes or Social Security taxes from his commission income. He was not reimbursed for his expenses. The firms did not exercise any control over him with respect to time spent or manner and means of effecting sales, except to limit the geographic area in which he could sell. There was no specific division of his time by these firms. On Schedule "C" of his 1963 Federal Income Tax Return where he reported his commission income and deducted his business expenses, he listed his business location as 55 W. Hills Road, Huntington Station, New York, which was also the business address of F. W. Engel, Inc.

#### CONCLUSIONS OF LAW

A. That petitioner's representation of more than one firm is the sale of cutlery combined with his maintenance of an office for business purposes in addition to the display of merchandise or the

or the storage of records at 55 W. Hills Road, Huntington Station, New York, during the years 1963 through 1965 constituted the carrying on of an unincorporated business in New York State in accordance with the meaning and intent of Section 703(f) of the Tax Law.

B. That petitioner's use of his out-of-state automobile for the storage of records and merchandise did not constitute having a regular place of business outside of New York State; and, therefore, all of his business income was properly allocated to New York State in accordance with the meaning and intent of Section 707(a) of the Tax Law.

C. That the business income received by petitioner from the firms he represented during the years 1963 through 1965 constituted receipts from his regular business of selling cutlery and not compensation as an employee exempt from the imposition of unincorporated business taxes in accordance with the meaning and intent of Section 703(b) of the Tax Law.

D. That the aforesaid activities of petitioner during the years 1963 through 1965 constituted the carrying on of an unincorporated business and his business income derived therefrom was subject to unincorporated business taxes in accordance with the meaning and intent of Section 703 of the Tax Law.

E. That the petition of Ludwig E. Becker is denied and the notice of deficiency issued January 22, 1968, is sustained.

DATED: Albany, New York  
*February 26, 1971*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Robert D. ...*  
\_\_\_\_\_  
COMMISSIONER

*William K. ...*  
\_\_\_\_\_  
COMMISSIONER