

*Bernstein, Samuel of  
O.B.T. 23 article  
1971*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL BERNSTEIN

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 SAMUEL BERNSTEIN

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

wrapper addressed as follows: Samuel Bernstein  
491 Riverdale Avenue  
Yonkers, New York 10705

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.

*Matthew Tundato*

*Linda Wilson*

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL BERNSTEIN

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 JACK LICHTER

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Jack Lichter  
3130 Irwin Avenue  
Bronx, New York 10463

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.

Barbara J. [Signature]

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
SAMUEL BERNSTEIN	:	
	:	
for Redetermination of Deficiency or	:	DECISION
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1963, 1964 and 1965.	:	

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Petitioner, Samuel Bernstein, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963, 1964 and 1965. (File No. 48052127). 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 January 20, 1971 at 9:15 A.M. Petitioner appeared by Jacob Lichter. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioner, Samuel Bernstein and his wife filed New York State combined income tax returns for the years 1963, 1964 and 1965. He did not file New York State unincorporated business tax returns for said years.

2. On May 22, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Samuel Bernstein, imposing unincorporated business tax upon the income received by him from his activities as a shoe salesman during the years 1963, 1964 and 1965 upon the grounds that his 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 \$1,108.60.

3. Petitioner, Samuel Bernstein, was a women's and children's shoe salesman during the years 1963, 1964 and 1965. During these years, he represented one firm in the sale of women's shoes and one firm in the sale of children's shoes. The firms were not affiliated. The items sold by him for each firm were non-competitive. He had no office, employees or stationary.

4. During the years 1963, 1964 and 1965 the firms for whom petitioner, Samuel Bernstein, sold merchandise did not withhold Federal and New York State income taxes and Social Security tax from the commissions paid to him. They did not cover him for disability or unemployment insurance. He was not a member of their pension plans. On schedule "C" of his Federal income tax return he deducted expenses incurred in connection with his sales activities. He was not reimbursed for any of his expenses by either of the firms. He did not have any written employment contracts. The firms for whom he sold merchandise did not exercise any control or supervision over his sales activities or techniques or to the time devoted to sales, except to limit the territory in which he could sell.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Samuel Bernstein, from the firms he represented during the years 1963, 1964 and 1965 constituted income from his regular business of selling shoes and not compensation as an employee exempt from the imposition of unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

B. That the aforesaid activities of petitioner, Samuel Bernstein, during the years 1963, 1964 and 1965 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That the petition of Samuel Bernstein is denied and the Notice of Deficiency issued May 22, 1967, is sustained.

DATED: Albany, New York  
March 1, 1971

STATE TAX COMMISSION

*Alphonse Feltham*  
COMMISSIONER

*Bruce Macleay*  
COMMISSIONER

*Milton Krimm*  
COMMISSIONER