

STATE OF NEW YORK
STATE TAX COMMISSION

Bienstock, Julius
U.B.T. Act 23

In the Matter of the Petition

of
JULIUS BIENSTOCK

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

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. :

State of New York
County of Albany

Rae Zimmerman , 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 August , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Morris

Epand, C.P.A. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Morris Epand, C.P.A.
570 Seventh Avenue
New York, New York 10018

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 August , 1971.

Martha F. Lewis

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JULIUS BIENSTOCK

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. :

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

State of New York
County of Albany

Rae Zimmerman , 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 August , 1971, she served the within Notice of Decision (or Determination) by (certified) mail upon Julius Bienstock (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Julius Bienstock
48 Munson Court
Huntington Station, 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

26th day of August , 1971.

Linda Wilson

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
JULIUS BIENSTOCK	:	DECISION
	:	
For Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1962.	:	
	:	

Petitioner, Julius Bienstock, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1962. (File #2-5838447). 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 February 24, 1971, at 1:15 P.M. Petitioner appeared by Morris Epand, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq., of Counsel).

ISSUES

I. Did petitioner, Julius Bienstock's, activities as a surgical and hospital supply salesman during the year 1962 constitute the carrying on of an unincorporated business?

II. If petitioner, Julius Bienstock, was carrying on an unincorporated business during the year 1962, what portion of the income derived therefrom should be allocated to New York State?

FINDINGS OF FACT

1. On or about April 15, 1963, petitioner, Julius Bienstock, filed a New York State income tax resident return for the year 1962. He did not file a New York State unincorporated business tax return

for said year at that time.

2. On May 10, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Julius Bienstock, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the year 1962 and accordingly issued a Notice of Deficiency therefor in the sum of \$214.21.

3. On May 28, 1965, petitioner, Julius Bienstock, filed a New York State unincorporated business tax return for the year 1962. On said return, he reported net income from business, less contributions, of \$12,352.74 of which \$4,817.55 was allocated to New York State.

4. Petitioner, Julius Bienstock, was a surgical and hospital supply salesman during the year 1962. He represented seven unaffiliated firms in the sale of surgical and hospital supplies. The items sold by him for each firm were non-competitive.

5. During the year 1962, the firms for whom petitioner, Julius Bienstock, sold surgical and hospital supplies did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him. He was not reimbursed for his expenses. He deducted business expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax return. The firms did not exercise any supervision or control over his sales activities or techniques or over the time he devoted to sales.

6. During the year 1962, petitioner, Julius Bienstock, maintained an office in his home in Huntington Station, New York. He did not have an office or a regular place of business outside of

New York. All of the firms for whom he sold hospital and surgical supplies had their main offices located outside of New York State. Approximately 85% of his sales were made to customers located outside of New York State.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Julius Bienstock, from the firms he represented during the year 1962 constituted income from his regular business of selling hospital and surgical supplies 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, Julius Bienstock, during the year 1962 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 since petitioner, Julius Bienstock, did not have a regular place of business outside of the State of New York during the year 1962, all of his business income, including the income derived from out of state sales during the period, was properly allocated to New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

D. That the petition of Julius Bienstock is denied and the Notice of Deficiency issued May 10, 1965, is sustained.

DATED: Albany, New York

August 26, 1971

STATE TAX COMMISSION

William J. Sullivan
COMMISSIONER

Bruce Hanley
COMMISSIONER

Milton Koehn
COMMISSIONER