

STATE OF NEW YORK
STATE TAX COMMISSION

Crane, Samuel
U.B.T.
1971

In the Matter of the Petition

of

SAMUEL CRANE

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) 1966

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 12th day of August, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon SAMUEL CRANE

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Samuel Crane
10 Continental Road
Scarsdale, 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

12th day of August, 1971

Kae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAMUEL CRANE

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) 1966

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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 12th day of August, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon ABRAHAM A.
KATZ, ESQ. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Abraham A. Katz, Esq.

111 West 57th Street
New York, 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

12th day of August, 1971.

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SAMUEL CRANE	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1966.	:	

Petitioner, Samuel Crane, 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 1966. (File No. 58619445). 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 23, 1971, at 11:00 A.M. Petitioner appeared by Abraham A. Katz, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of Counsel).

ISSUES

I. Did petitioner, Samuel Crane's, selling activities during the year 1966, constitute the carrying on of an unincorporated business.

II. Did petitioner, Samuel Crane, have reasonable cause for failing to file an unincorporated business tax return for the year 1966.

FINDINGS OF FACT

1. Petitioner, Samuel Crane, and his wife filed a New York State combined income tax return for the year 1966. He did not file a New York State unincorporated business tax return for said year.

2. On April 28, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Samuel Crane, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the year 1966. It also imposed a penalty of \$168.22 for failure to file an unincorporated business tax return for said year. In accordance with the aforesaid it issued a Notice of Deficiency in the sum of \$923.28.

3. During the year 1966, petitioner, Samuel Crane, was a women's dress salesman. He represented four unaffiliated firms in the sale of women's dresses, although he never represented more than two firms at one time. The items sold by him for each firm were non-competitive. He was not a stockholder, director, or officer of, nor did he have a financial interest in any of the firms he represented.

4. During the year 1966, only one of the firms for whom petitioner, Samuel Crane, sold women's dresses withheld Federal and New York State income taxes and social security tax from the commissions paid to him. He received approximately half his commission income from this firm. He was not reimbursed for any of his business expenses. He deducted these business expenses on his Federal income tax return. The firms for whom he sold merchandise did not exercise any control or supervision over his sales activities or techniques or to the time he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, Samuel Crane, was advised by his attorney that he was not required to report any unincorporated business tax due for the year 1966.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Samuel Crane, from the firms he represented during the year 1966, constituted income from his regular business of selling dresses 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 Crane, during the year 1966, 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 petitioner, Samuel Crane, had reasonable cause for not filing an unincorporated business tax return for the year 1962, and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of Samuel Crane is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the year 1966, and the Notice of Deficiency issued April 28, 1969, is reduced from \$923.28 to \$755.06 together with such interest as may be due from April 28, 1969, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

August 12, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER