

STATE OF NEW YORK
STATE TAX COMMISSION

0.6 57
1971

In the Matter of the Petition

of

Walter Diamond

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

Martha Funaro , 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 April , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Walter

Diamond (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Walter Diamond
30-20 Johnson 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

12th day of April , 1971.

James S. Van Buren
Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

WALTER DIAMOND

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.

DECISION

The taxpayer petitioned 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. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of New York on December 15, 1970. The taxpayer appeared pro se and the Income Tax Bureau appeared through Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

FINDINGS OF FACT

1. The issue in this matter is whether income received by the taxpayer through his activities as a "commission merchant" is subject to unincorporated business tax.

2. Taxpayer, during the years in question, sold restaurant furniture and equipment on a commission basis under an oral agreement with L. & B. Products Corporation. During the year 1961, the taxpayer also represented the firm of Empire State Chair on a straight commission basis.

3. Taxpayer maintained an office in his home and an answering service and mail drop in New Jersey. He was not reimbursed for expenses, nor were his commissions subject to withholding tax and social security. The taxpayer was not covered for unemployment insurance or workmen's compensation.

4. Taxpayer was under no supervision and control as to the manner and means of affecting sales, or as to the hours which he worked. In addition, the taxpayer reported and paid the self-employment tax with the Internal Revenue Service.

5. On July 12, 1965, notice of deficiency, file #2-3810654 was issued against the taxpayer in the amount of \$198.54 plus interest. This deficiency was based upon a determination by the Income Tax Bureau that the activities of the taxpayer constituted the carrying on of an unincorporated business.

DECISION

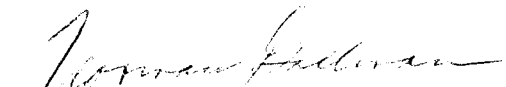
A. The activities of the taxpayer constitute the carrying on of an unincorporated business, the income from which is subject to unincorporated business tax.

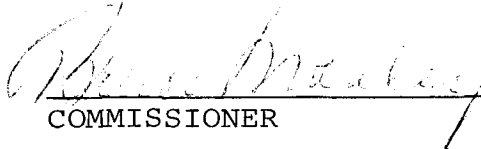
B. The petition is therefore denied and the deficiency is sustained, together with such interest as may be lawfully due.

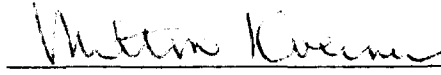
DATED: Albany, New York

April 12, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER