

STATE OF NEW YORK
STATE TAX COMMISSION

Gemeiner Milton
N.B.F.
1971

In the Matter of the Petition

of

Milton Gemeiner

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, 1963, & 1964

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 29th day of March , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Milton
Gemeiner (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Milton Gemeiner
98-09 65th Road
Flushing, 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

29th day of March , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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of

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 29th day of March , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Charles
Farber (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Charles Farber
55 John 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

29th day of March , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition :
of :
MILTON GEMEINER : DECISION
for Redetermination of Deficiency or :
for Refund of Unincorporated Business: :
Tax under Article 23 of the Tax Law :
for the Years 1962, 1963 and 1964. :

Petitioner, Milton Gemeiner, has filed a petition for re-determination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1962, 1963 and 1964. (File No. 28043069). 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 25, 1971, at 1:15 P.M. Petitioner appeared by Charles Farber, C.P.A. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioner, Milton Gemeiner, and his wife filed New York State combined income tax returns for the years 1962, 1963 and 1964. He did not file New York State unincorporated business tax returns for said years.

2. On November 14, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Milton Gemeiner, imposing unincorporated business tax upon his income as an independent sales contractor during the years 1962, 1963 and 1964, 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. Said Statement of Audit Changes also allowed a personal income tax refund of \$69.71 for the year 1962, and imposed additional personal income tax due of \$59.02 for the year 1963. These adjustments to personal income tax

were consented to by the petitioner. The aforesaid refund was first credited against unincorporated business tax due of \$21.68 for the year 1962 and the balance credited against unincorporated business tax due for the year 1963, and accordingly a Notice of Deficiency was issued for the years 1963 and 1964 in the sum of \$899.46 on which there was a balance still due of \$841.11.

3. Petitioner, Milton Gemeiner, was a women's sportswear salesman during the years 1962, 1963 and 1964. He represented one firm in the sale of women's sportswear. He had no office.

4. During the years 1962, 1963 and 1964, the firm for whom petitioner, Milton Gemeiner, sold women's sportswear did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. It covered him for disability insurance. He was a member of its pension plan. It did not reimburse him for any of his business expenses, with the exception of a portion of the expenses of trade shows. On Schedule "C" of his Federal income tax return, he deducted expenses incurred in connection with his sales activities. It 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 to the Metropolitan New York-New Jersey area. He purchased samples, hangers and sample racks from the firm. On his Federal and New York State income tax returns he stated his occupation as "Independent Contractor-Salesman." He hired a salesman to sell in the New Jersey portion of his territory. On these sales, he received a 7% commission from the firm and paid a 6% commission to the salesman.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Milton Gemeiner, from the firm he represented during the years 1962, 1963 and 1964, constituted income from his regular business of selling women's sportswear 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, Milton Gemeiner, during the years 1962, 1963 and 1964, 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 Milton Gemeiner is denied and the Notice of Deficiency issued November 14, 1966, is sustained.

DATED: Albany, New York
March 23, 1971

STATE TAX COMMISSION

Thomas Galligan

COMMISSIONER

Bessie Munday

COMMISSIONER

Milton Korman

COMMISSIONER