

STATE OF NEW YORK  
STATE TAX COMMISSION

*Geldzahler, Joseph  
& Charlotte  
U.S.T. - Art 23  
(1962 & 63)*

In the Matter of the Petition

of

Joseph Geldzahler & Charlotte  
Geldzahler :

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 :

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 1st day of March , 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Joseph Geldzahler  
& Charlotte Geldzahler (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Joseph Geldzahler & Charlotte Geldzahler  
55 Central Park West  
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

1st day of March , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

Joseph Geldzahler & Charlotte  
Geldzahler

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;

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 1st day of March , 19 71, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Sidney Meyers, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Sidney Meyers, Esq.  
51 Chambers 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

1st day of March , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
	:	
of	:	
	:	
JOSEPH GELDZAHLER & CHARLOTTE	:	
GELDZAHLER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1962 and 1963.	:	

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Petitioners, Joseph Geldzahler and Charlotte Geldzahler, have filed petitions for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1962 and 1963. (File Nos. 2-3788047 and 3-7796198). 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 21, 1971 at 9:15 A.M. Petitioners appeared by Sidney Meyers, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioners, Joseph Geldzahler and Charlotte Geldzahler, filed a New York State income tax resident return for the year 1962 and a New York State combined income tax return for the year 1963. They did not file New York State unincorporated business tax returns for said years.

2. On September 13, 1965 the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Joseph Geldzahler and Charlotte Geldzahler, imposing unincorporated business tax upon the income received by petitioner, Joseph Geldzahler, from his activities as a diamond salesman during the year 1962 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 \$1,049.58.

3. On February 28, 1966 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Joseph Geldzahler, imposing unincorporated business tax upon the income received by him from his activities as a diamond salesman during the year 1963 upon the same grounds as set forth in the preceding paragraph and accordingly issued a Notice of Deficiency therefor in the sum of \$1,035.70.

4. During the year 1962 petitioner, Charlotte Geldzahler, was neither employed or engaged in an unincorporated business.

5. During the years 1962 and 1963 petitioner, Joseph Geldzahler, was a diamond salesman. Various firms consigned raw and finished diamonds on memorandum to him for sale. He negotiated the sales price between the buyers and the sellers. He had no right to sell the diamonds without the consent of the owners. His commissions on the sale of diamonds were sometimes paid by the buyers and sometimes by the sellers. The firms for whom he sold diamonds were not affiliated. The items sold by him for each firm were often competitive. He did not have any employees. He used a room in his home for the maintenance and storage of records.

6. During the years 1962 and 1963 none of the firms paying commissions to petitioner, Joseph Geldzahler, withheld Federal or New York State income taxes or social security tax from said commissions. On schedule "C" of his Federal income tax return, he deducted business expenses in connection with his sales activities. He was not reimbursed for any of his expenses. He billed these firms once a year for commissions. The bills were made out on his own billheads. The firms paying commissions to him did not exercise any control over his sales activities and techniques or to the time devoted to sales.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Joseph Geldzahler, from the firms he represented during the year 1962 and 1963 consti-

tuted income from his regular business of selling diamonds 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, Joseph Geldzahler, during the year 1962 and 1963 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, Charlotte Geldzahler, was not engaged in an unincorporated business during the year 1962 she was not liable for unincorporated business tax for said year.

D. That the petitions of Joseph Geldzahler and Charlotte Geldzahler are granted to the extent of cancelling the Notice of Deficiency issued September 13, 1965 as against petitioner, Charlotte Geldzahler, and except as so granted, the petitions are in all other respects denied and the notices of deficiency issued September 13, 1965 and February 28, 1966 against petitioner, Joseph Geldzahler are sustained.

DATED: Albany, New York

*March 13, 1967*

STATE TAX COMMISSION

*Irving Gallman*  
\_\_\_\_\_  
COMMISSIONER

*Russ Manning*  
\_\_\_\_\_  
COMMISSIONER

*Milton Kohn*  
\_\_\_\_\_  
COMMISSIONER