

STATE OF NEW YORK
STATE TAX COMMISSION

Goldstein, David
D.B.T. A-4.23
(1971)

In the Matter of the Petition

of

DAVID GOLDSTEIN

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)) 1965, 1966 & 1967

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 25th day of August , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon David Goldstein

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: David Goldstein
15 Sherwood Lane
Roslyn Heights, 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

25th day of August , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID GOLDSTEIN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

Petitioner, David Goldstein, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967. (File No. 78710044). 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 June 15, 1971, at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did the selling activities of petitioner, David Goldstein, during the years 1965, 1966 and 1967 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, David Goldstein, and his wife filed New York State combined income tax returns for the years 1965, 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On November 24, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, David Goldstein, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1965, 1966 and 1967 and accordingly issued a Notice of Deficiency in the sum of \$938.26.

3. Petitioner, David Goldstein, sold supplies to shoe and handbag manufacturers during the years 1965, 1966 and 1967. He represented approximately seven unaffiliated firms in the sale of these items. The items sold by him for each firm were non-competitive. He did not have any employees.

4. During the years 1965 and 1966 one of the firms and during the year 1967 two of the firms for whom he sold merchandise withheld federal income and social security taxes from the commissions paid to him. The income from these firms was so small that they did not withhold New York State personal income tax. He was not reimbursed by any of the firms for expenses incurred in connection with his sales activities. On Schedule "C" of his federal income tax returns he deducted expenses incurred in connection with his sales activities. The firms for whom he sold merchandise did not maintain any substantial control or supervision over his sales activities except to limit the territory in which he could sell. They did not carry unemployment insurance for him. He was not a member of their pension plans.

CONCLUSIONS OF LAW

A. That the income received by petitioner, David Goldstein,

from the firms he represented during the years 1965, 1966 and 1967 constituted income from his regular business of selling supplies to shoe and handbag manufacturers 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.

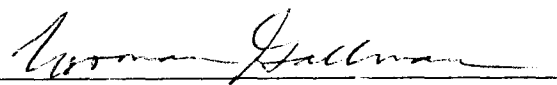
B. That the aforesaid activities of petitioner, David Goldstein, during the years 1965, 1966 and 1967, constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

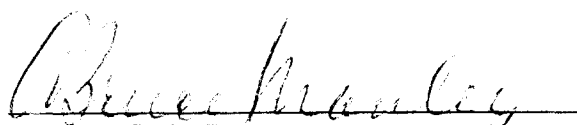
C. That the petition of David Goldstein is denied and the Notice of Deficiency issued November 24, 1969, is sustained.

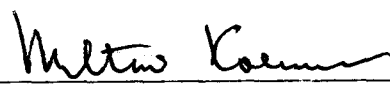
DATED: Albany, New York

STATE TAX COMMISSION

August 25, 1971.


COMMISSIONER


COMMISSIONER


COMMISSIONER