

STATE OF NEW YORK
STATE TAX COMMISSION

*Gutter, Wm.
U.S.T.
Article 23
1971*

In the Matter of the Petition

of

WILLIAM GUTTER

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 & 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 8th day of June , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon William Gutter

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: William Gutter
17 Woodland Place
Great Neck, 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

8th day of June , 1971.

Linda Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 8th day of June , 1971 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Henry R.

Scheinkman, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Henry R. Scheinkman, Esq.
570 Seventh Avenue
New York, New York 10018

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.

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8th day of June , 1971

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WILLIAM GUTTER	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law for	:	
the Years 1961, 1962 and 1963.	:	
	:	

Mr. William Gutter 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, 1962 and 1963. A formal hearing was held in the offices of the State Tax Commission, in the City of New York on February 26, 1970. The petitioner appeared and was represented by Henry R. Scheinkman, Esq.

ISSUE

Whether the income, derived by the petitioner from his activity as "manufacturers representative," is subject to the unincorporated business tax.

FINDINGS OF FACT

1. The petitioner, William Gutter, filed New York State income tax resident returns for the years 1961, 1962 and 1963, but did not file unincorporated business tax returns.

2. On October 25, 1965, the Income Tax Bureau issued a Notice of Deficiency under File No. 3-3407829 for the years 1961, 1962 and 1963, in the amount of \$1,112.68 plus statutory interest.

3. The petitioner timely filed a petition for redetermination of the deficiency.

4. On his Federal and State income tax returns, the petitioner described himself as a "manufacturers representative;" filed Federal 1040 Schedule "C", Profit from Business or Profession; claimed deductions from commissions received in the amount of \$16,934.28 for the year 1961, and \$18,881.10 for the year 1962. The resulting net profit was then shown on the State returns as "wages, salaries, tips, etc." on page two. Social security and income taxes are not withheld by his principals.

5. The petitioner is a district sales representative for the Caldwell Furniture Company of Lenior, North Carolina. In addition, the petitioner represented two other furniture manufacturing concerns. In all cases, the petitioner was compensated on a straight commission basis. The petitioner employed assistants who were paid on a commission basis, and who also represented other lines of products. The petitioner was listed in the New York City telephone directory under "furniture dealers" in his own name.

6. The petitioner has failed to prove that the nature of his association with the Caldwell Furniture Company included the usual characteristics of employer-employee relationship.

7. The petitioner is not an employee of the Caldwell Furniture Company.

DECISION

A. The business activities of the petitioner for the years 1961, 1962, and 1963 described as "manufacturers representative," constitute the carrying on of an unincorporated business, and the

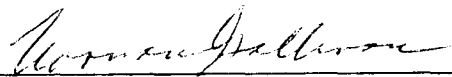
resulting income therefrom was subject to the unincorporated business tax.

B. The deficiency is sustained, and the petition is denied.

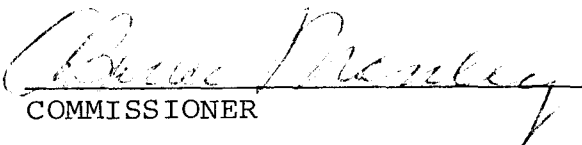
DATED: Albany, New York

June 8, 1971.

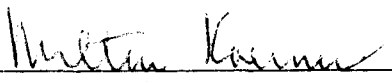
STATE TAX COMMISSION



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