

STATE OF NEW YORK
STATE TAX COMMISSION

Gottlieb, Milton
N.S.T.
Art 23
1971

In the Matter of the Petition

of

MILTON GOTTLIEB

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 and 1965.

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
BY (CERTIFIED) MAIL

State of New York
County of Albany

Linda Wilson, 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 24th day of August, 19⁷¹, she served the within
Notice of Decision (or Determination) by (certified) mail upon MILTON GOTTLIEB

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

wrapper addressed as follows: Milton Gottlieb
562 Windsor Street
Westbury, New York 11590

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

24th day of August, 19 71

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MILTON GOTTLIEB	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1962, 1963, 1964 and 1965.	:	
	:	

Petitioner, Milton Gottlieb, 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 1962, 1963, 1964 and 1965. (File No. 48073468). 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 April 20, 1971, at 9:15 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq. of Counsel).

ISSUE

I. Did the selling activities of petitioner, Milton Gottlieb, during the years 1962, 1963, 1964 and 1965, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Milton Gottlieb, and his wife filed New York State income tax resident returns for the years 1962, 1963 and 1964, and a New York State combined income tax return for the year 1965. He did not file unincorporated business tax returns for said years.

2. On February 19, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Milton Gottlieb, imposing unincorporated business tax upon the income received by him from his activities as a ladies' suit salesman during the years 1962, 1963, 1964 and 1965, and accordingly issued a Notice of Deficiency in the sum of \$5,052.73.

3. During the years 1962, 1963, 1964 and 1965, petitioner, Milton Gottlieb, was a ladies' suit salesman. He represented Gino Paoli and several other unaffiliated firms in the sale of women's suits. He sold principally for Gino Paoli. The items sold by him for each firm were noncompetitive. He had a written contract only with Gino Paoli. He generally used the stationery, telephone and offices of Gino Paoli in the conduct of his sales activities. He could not represent other firms without the consent of Gino Paoli.

4. During the years 1962, 1963, 1964 and 1965 the firms for whom petitioner, Milton Gottlieb, sold ladies' suits, did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him. He was not reimbursed for any of his business expenses. He deducted these business expenses on his Federal income tax returns. They did not cover him for unemployment insurance. He was not a member of their pension plans. Gino Paoli sold sample merchandise to him. The firms for whom he sold merchandise did not exercise any control or supervision over his sales activities or techniques or to the time he devoted to sales, except to limit the territory in which he could sell.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Milton Gottlieb, from the firms he represented during the years 1962, 1963, 1964 and 1965, constituted income from his regular business of selling ladies' suits 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 Gottlieb, during the years 1962, 1963, 1964 and 1965, 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 Gottlieb is denied and the Notice of Deficiency issued February 19, 1968, is sustained.

DATED: Albany, New York

August 24, 1971

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER