

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID LIBSOHN

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)) 1964, 1965 and 1966.

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

State of New York  
County of Albany

Rae Zimmerman, 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 28th day of December, 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon David  
Libsohn

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

wrapper addressed as follows: David Libsohn  
2 Dogwood Hill  
Brookville, 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

28th day of December, 1971.

Martha Fuxaro

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
DAVID LIBSOHN	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax	:	
under Article 23 of the Tax Law for the	:	
Years 1964, 1965 and 1966.	:	

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Petitioner, David Libsohn, 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 1964, 1965 and 1966. (File No. 54858206). 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 17, 1971 at 2:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did petitioner, David Libsohn's, selling activities during the years 1964, 1965 and 1966 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, David Libsohn, and his wife filed New York State income tax resident returns for the years 1964, 1965 and 1966. He did not file New York State unincorporated business tax returns for said years.

2. On March 31, 1969 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, David Libsohn, imposing unincorporated business tax upon the income received by him from his business activities during the years 1964, 1965 and 1966, and accordingly issued a Notice of Deficiency in the sum of \$2,520.08.

3. Petitioner, David Libsohn, was an electronic equipment and parts sales agent during the years 1964, 1965 and 1966. He represented Marubeni-Iida (America), Inc. in the sale of electronic equipment and parts imported from Japan. He did not sell the products of any other company.

4. In May 1964 petitioner, David Libsohn, entered into a written agreement with Marubeni-Iida (America), Inc. wherein he agreed to act as their sales agent. Pursuant to the agreement he was to maintain an office in New York City. He had the right to employ salesmen and other agents or employees. He was required to pay his own expenses. In the event of insolvency the contract could be terminated. It was specifically provided that he was to be an independent contractor. In practice he used the company's offices and facilities in New York City without charge and did not employ anyone. He was not reimbursed for his expenses. On Schedule "C" of his federal income tax returns he deducted expenses incurred in connection with his sales activities. The commissions that he received on the sale of merchandise were determined in the following manner. The company would set a minimum price for an item. He would then sell the item for whatever the market would bring above the minimum price. He would receive as a commission a percentage in excess of 50% of the difference between the minimum price and the market price. New York State and Federal income taxes and social

security tax were not withheld from the commissions paid to him. Marubeni-Iida (America), Inc. did not exercise any supervision or control 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, David Libsohn, from Marubeni-Iida (America), Inc. during the years 1964, 1965 and 1966 constituted income from his regular business of selling electronic equipment and parts 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 Libsohn, during the years 1964, 1965 and 1966 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 Libsohn is denied and the Notice of Deficiency issued March 31, 1969 is sustained.

DATED: Albany, New York  
*December 28, 1971*

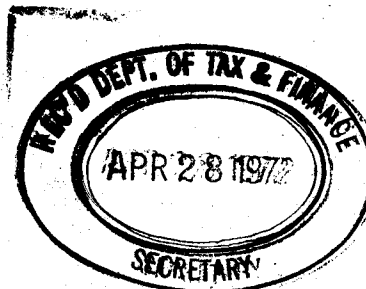
STATE TAX COMMISSION

*Thomas J. Sullivan*  
\_\_\_\_\_  
COMMISSIONER

*Bruce H. Hawley*  
\_\_\_\_\_  
COMMISSIONER

*William K. Kuen*  
\_\_\_\_\_  
COMMISSIONER

April 27, 1972



The Honorable Louis J. Lefkowitz  
Attorney General  
State Capitol  
Albany, New York 12224

Re: David Libscho vs. State Tax  
Commission

Dear Mr. Lefkowitz:

Enclosed herein please find Notice of Motion and Petition, etc. of the taxpayer scheduling the matter at a Special Term of the Supreme Court for the County of Albany on May 12, 1972. The file in the above matter is also enclosed. No Bond for Costs has been received.

Sincerely yours,

SAUL HECKELMAN  
Director

JS:lk  
Encs.