

STATE OF NEW YORK
STATE TAX COMMISSION

Liebowitz, Jerome
17 Nevinwood Pl.
U.B.T. - Art 23

In the Matter of the Petition

of

JEROME LIEBOWITZ

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 27th day of October , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Jerome Liebowitz

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jerome Liebowitz
17 Nevinwood Place
Huntington Station, New York 11746

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

27th day of October , 1971.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JEROME LIEBOWITZ

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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

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 27th day of October , 19 71, she served the within
Notice of Decision (or Determination) by (certified) mail upon Milgraum &
Willen, Esqs. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Milgraum & Willen, Esqs.
75 Prospect Street
Huntington, New York 11743

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

27th day of October , 1971.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JEROME LIEBOWITZ	:	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, Jerome Liebowitz, 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. 74559230). A Notice of Formal Hearing was sent to petitioner and his representative, Milgraum & Willen, Esqs., scheduling a formal hearing before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on June 14, 1971, at 1:30 P.M. Prior to the hearing date, petitioner's representative advised the State Tax Commission that they wished to waive a formal hearing and submit the matter to the State Tax Commission on the entire record contained in the file. The following decision is rendered by the State Tax Commission upon due consideration of said record.

ISSUE

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

FINDINGS OF FACT

1. Petitioner, Jerome Liebowitz, and his wife filed New York State income tax resident 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, Jerome Liebowitz, imposing unincorporated business tax upon the income received by him from his activities as a custom made screw and sheet metal parts salesman during the years 1965, 1966 and 1967. It also imposed a 25% penalty for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$3,222.20.

3. During the years 1965, 1966 and 1967, petitioner, Jerome Liebowitz, was a custom made screw and sheet metal parts salesman. He represented approximately eight firms in the sale of said products. The items sold by him for each firm were noncompetitive. He had no employees.

4. During the years 1965, 1966 and 1967, none of the firms for whom petitioner, Jerome Liebowitz, sold merchandise withheld 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 expenses on Schedule "C" of his federal income tax returns. He used one room in his house as an office. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his sales activities or techniques or to the time he devoted to sales except to require him to call on accounts on a regular basis.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Jerome Liebowitz, from the firms he represented during the years 1965, 1966 and 1967 constituted income from his regular business of selling custom made screws and sheet metal 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, Jerome Liebowitz, 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 Jerome Liebowitz is denied and the Notice of Deficiency issued November 24, 1969, is sustained.

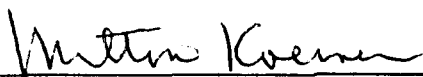
DATED: Albany, New York

October 27, 1971.

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER