

STATE OF NEW YORK  
STATE TAX COMMISSION

*Joseph J. & Mary  
O. Lower  
Unincorporated  
Business*

In the Matter of the Petition

of

JOSEPH J. & MARY O. LOWER :

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  
& 1964

1961-1964.  
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 7th day of July , 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Joseph J. &  
Mary O. Lower (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Joseph J. & Mary O. Lower  
504 Limberlost Trail  
Decatur, Indiana

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

7th day of July , 1971.

Paul J. Zimmerman

Martha Funaro



STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
JOSEPH J. LOWER & MARY O. LOWER :  
for Redetermination of Deficiency or for : DECISION  
Refund of Unincorporated Business Tax  
under Article 23 of the Tax Law for the :  
Years 1961, 1962, 1963 and 1964. :  
:

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Petitioners, Joseph J. Lower and Mary O. Lower, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1961, 1962, 1963 and 1964. (File No. 28059177). 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 November 18, 1970 at 2:45 P.M. Petitioners appeared by S.P. Barr, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq. (Solomon Sies, Esq. of Counsel).

FINDINGS OF FACT

1. Petitioners, Joseph J. Lower and Mary O. Lower filed New York State Combined Income Tax Returns for the years 1961, 1962, 1963 and 1964. He did not file any unincorporated business tax returns for said years.
2. On October 17, 1966 the Income Tax Bureau issued a Statement of Audit Changes against Petitioner, Joseph J. Lower, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1961, 1962, 1963 and 1964, upon the grounds that his sales activities constituted the carrying on of an unincorporated business in accordance with the

provisions of Article 23 of the Tax Law and accordingly issued a Notice of Deficiency, therefor, in the sum of \$3,075.08.

3. Petitioner, Joseph J. Lower, was a glassware and tableware salesman during the years 1961, 1962, 1963 and 1964. He sold glassware for Imperial Glass Corp. and tableware for Gense Import, Ltd. The items sold by him for each firm were non-competitive. His territory was limited to department stores, specialty shops and gift shops in the metropolitan New York, - New Jersey area. In connection with his sales activities, he used without charge, the New York office, telephone and secretarial services of Imperial Glass Corp.

4. During the years 1961, 1962, 1963 and 1964 the firms for whom petitioner, Joseph J. Lower sold merchandise did not withhold Federal and New York State income or Social Security taxes from the commissions paid to him. He did not receive any pension, disability insurance or unemployment insurance benefits from them. He did not have any written employment agreements. On his income tax returns he listed his occupation as "independent commission salesman." With the exception of the costs of occasional sales meetings at the Ohio home office of Imperial Glass Corp., he was not reimbursed for any expenses incurred, including expenses for advertising, trade shows, travel and entertainment. On Schedule "C" of his Federal income tax return, he deducted these business expenses. 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.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Joseph J. Lower, from the firms he represented during the years 1961, 1962, 1963 and 1964 constituted receipts from his regular business of selling glassware and tableware 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, Joseph J. Lower, during the years 1961, 1962, 1963 and 1964 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.

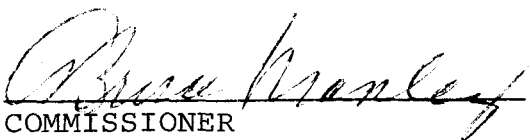
C. That the petition of Joseph J. Lower and Mary O. Lower is denied and the Notice of Deficiency issued October 17, 1966 is sustained.

DATED: Albany, New York

*July 7, 1971.*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER