

STATE OF NEW YORK  
STATE TAX COMMISSION

*Maier, Louis, Jr.*  
*U.B.T. - Art (23)*

In the Matter of the Petition

of

LOUIS MAIER, JR.

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

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 30th day of August, 1971, she served the within  
Notice of Decision (or Determination) by (certified) mail upon LOUIS MAIER, JR.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Louis Maier, Jr.

79 Vanderbilt Avenue  
Floral Park, New York 11001

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

30th day of August, 1971.

Rae Zimmerman

Linda Wilson

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
LOUIS MAIER, JR.	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1964.	:	

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Petitioner, Louis Maier, Jr., has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1964. (File No. 26255213). 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 16, 1971, at 1:15 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUES

I. Did the selling activities of petitioner, Louis Maier, Jr., during the year 1964 constitute the carrying on of an unincorporated business?

II. Did petitioner, Louis Maier, Jr., have reasonable cause for failing to file an unincorporated business tax return for the year 1964?

FINDINGS OF FACT

1. Petitioner, Louis Maier, Jr., and his wife filed a New York State income tax resident return for the year 1964. He did not file a New York State unincorporated business tax return for said year.

2. On May 26, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Louis Maier, Jr., imposing unincorporated business tax upon the income received by him as a salesman during the year 1964. It also imposed a penalty of \$84.08 for failure to file an unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$503.40.

3. During the year 1964, petitioner, Louis Maier, Jr., was a fabric and accessories salesman. He represented seven unaffiliated firms in the sale of said products. The items sold by him for each firm were noncompetitive.

4. During the year 1964, the firms for whom petitioner, Louis Maier, Jr., sold merchandise did not withhold Federal and New York State income taxes and social security tax from the commissions they paid to him. He was not reimbursed for any of his business expenses. He deducted these business expenses on Schedule "C" on his federal income tax return. He maintained an office in his home. Approximately 50% of his gross commission income was derived from sales made on behalf of Columbus Mills, Inc. He was allowed to sell related nonconflicting products only with the consent of said company. Columbus Mills, Inc. required him to call on "A" accounts once every two weeks and "B" accounts once every four weeks. He was further required to report his progress, by account, at approximately two week intervals to the sales manager in the New York office of Columbus Mills, Inc. He

was supplied by the company with lists of all active accounts in his territory together with lists of prospective accounts and inquiries which he was required to follow up. Except as heretofore set forth, 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.

5. Petitioner, Louis Maier, Jr., was not aware at the time that he filed his personal income tax return for the year 1964 that he was also required to file an unincorporated business tax return reflecting the unincorporated business tax on his net commission income for said year.

#### CONCLUSIONS OF LAW

A. That the income received by petitioner, Louis Maier, Jr., from the firms he represented during the year 1964 constituted income from his regular business of selling fabrics and accessories 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, Louis Maier, Jr., during the year 1964 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 petitioner, Louis Maier, Jr., did not have reasonable cause for failing to file an unincorporated business tax return


for the year 1964 since ignorance of the law is not considered reasonable cause and therefore a penalty pursuant to section 685(a) of the Tax Law was properly assessed.


D. That the petition of Louis Maier, Jr., is denied and the Notice of Deficiency issued May 26, 1969, is sustained.

DATED: Albany, New York  
*August 30, 1971,*

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER