

STATE OF NEW YORK
STATE TAX COMMISSION

Weisberg, Irving
U.B.T. - Act 23
(1971)

In the Matter of the Petition

of
IRVING WEISBERG

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

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 and
1964.

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 24th day of August , 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Irving
Weisberg (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Irving Weisberg
73 Finch Drive
East Hills, 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

24th day of August , 1971.

Martha Fumero

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING WEISBERG

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 and
1964.

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 24th day of August, 1971, she served the within
Notice of Decision (or Determination) by (certified) mail upon Nathan E.

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

wrapper addressed as follows: Nathan E. Jordan
450 Seventh Avenue
New York, New York 10001

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, 1971

Nathan E. Jordan

Rae Zimmerman

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Irving Weisberg, 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 and 1964. (File #14362924). 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 February 22, 1971, at 1:30 P.M. Petitioner appeared by Nathan E. Jordan. The Income Tax Bureau appeared by Edward H. Best, Esq. (Albert Rossi, Esq. of Counsel).

ISSUES

I. Did the business activities of petitioner, Irving Weisberg, during the years 1962, 1963 and 1964, constitute the carrying on of an unincorporated business.

II. Did the income reported as salary by petitioner, Irving Weisberg, during the years 1962, 1963 and 1964, constitute business connected income subject to unincorporated business tax.

III. Did petitioner, Irving Weisberg, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1962, 1963 and 1964.

FINDINGS OF FACT

1. Petitioner, Irving Weisberg, and his wife filed New York State income tax resident returns for the years 1962, 1963 and 1964. He did not file New York State unincorporated business tax returns for said years.

2. On March 28, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Irving Weisberg, imposing unincorporated business tax upon the income received by him from his business activities during the years 1962, 1963 and 1964. It also imposed unincorporated business tax on income reported by him as salary. It further imposed a penalty in the sum of \$98.52 for failure to file unincorporated business tax returns for said years. In accordance with said Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$532.23.

3. During the years 1962, 1963 and 1964, petitioner, Irving Weisberg, was a resident fur coat buyer for P. Schlamp & Son of Minneapolis, Minnesota and Morris B. Sachs, Inc. of Chicago, Illinois. He would receive orders from these firms requesting him to purchase fur coats in accordance with the specifications contained in the orders. He would then go to various manufacturers until he found one who could manufacture the coat in accordance with the specifications. The manufacturer would then make the coat and forward it to him for inspection. He would then forward the coat to one of his principals. The manufacturer would bill the principal directly. Petitioner would receive from the manufacturer a commission equal to two percent of the purchase price.

4. During the years 1962, 1963 and 1964, petitioner, Irving Weisberg, carried on his business activities in New York City in

a one room office containing two desks, a packing table, a typewriter and a vault used to hold coats. The office was leased in the name of P. Schlamp & Son, but the rent was paid by petitioner. He personally employed a shipping clerk.

5. Petitioner, Irving Weisberg, received \$6,000.00 a year from Morris B. Sachs, Inc. and approximately \$9,000.00 a year from P. Schlamp & Son during the years 1962, 1963 and 1964. Federal income and social security taxes were withheld from the income paid to him by these firms. Only Morris B. Sachs, Inc. withheld New York State income tax from said payments. In addition, he received commission income from manufacturers of \$6,786.41 in 1962, \$8,304.62 in 1963, and \$9,202.34 in 1964. In connection with his business activities, he incurred expenses of \$10,386.48 in 1962, \$11,309.98 in 1963 and \$10,731.54 in 1964. He was not reimbursed for any of these expenses. He deducted these expenses of Schedule "C" of his Federal income tax returns. None of the firms exercised any control or supervision over his buying activities or techniques or to the time he devoted to business.

6. Petitioner, Irving Weisberg, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1962, 1963 and 1964.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Irving Weisberg, from Morris B. Sachs, Inc. and P. Schlamp & Son during the years 1962, 1963 and 1964 together with the two percent fees received from various fur coat manufacturers constituted income from his regular business as a resident fur coat buyer 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, Irving Weisberg, during the years 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.

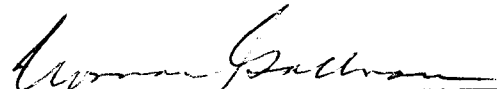
C. That petitioner, Irving Weisberg, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1962, 1963 and 1964 and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.


D. That the petition of Irving Weisberg is granted to the extent of cancelling penalties imposed pursuant to section 685(a) of the Tax Law for the years 1962, 1963 and 1964, in the total sum of \$98.52 and the Notice of Deficiency issued March 28, 1966, is reduced from \$532.23 to \$433.71, together with such interest as may be due from March 28, 1966, and, except as so granted, the petition is in all other respects denied.

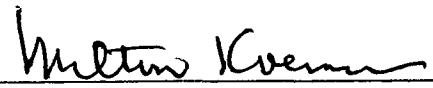
DATED: Albany, New York

August 24, 1971

STATE TAX COMMISSION


COMMISSIONER


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