

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MEYER L. ADLERSTEIN

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 16th day of March, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Meyer L. Adlerstein (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Meyer L. Adlerstein
140 Cook Avenue
Yonkers, New York 10701
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

16th day of March, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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of

MEYER L. ADLERSTEIN

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State of New York
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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 16th day of March , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Richard W.
Fulfree, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Richard W. Fulfree, Esq.
82 Nepperhan Avenue
Yonkers, New York 10701

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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the United States Post Office Department within the State of New York.

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Sworn to before me this

16th day of March , 1972

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 16, 1972

Mayer L. Adlerstein
140 Cook Avenue
Yonkers, New York 10701

Dear Mr. Adlerstein:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 722**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
the date of this notice.

Any inquiries concerning the computation of tax due or refund allowed
in accordance with this decision or concerning any other matter relat-
ing hereto may be addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,

Nigel G. Wright

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

MEYER L. ADLERSTEIN : DECISION

for a Redetermination of a Deficiency or :
for Refund of Unincorporated Business :
Taxes under Article 23 of the Tax Law for :
the Years 1965, 1966 and 1967. :

Meyer L. Adlerstein filed a petition for a redetermination of a deficiency in unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966 and 1967. A hearing was held before Nigel G. Wright, Hearing Officer, on June 25, 1971 at the offices of the State Tax Commission, 80 Centre Street, New York City.

Richard W. Fulfree, Esq., represented the petitioner. Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) represented the Income Tax Bureau. The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether or not a sales representative is an independent contractor subject to tax under the unincorporated business tax law.

FINDINGS OF FACT

1. Mr. Adlerstein is a sales representative. He is compensated on a straight commission basis.
2. Mr. Adlerstein represented three principals on a regular basis: Chester B. Stern, Inc., Thompson Mahogany Company and the Weber Veneer and Plywood Company. Chester B. Stern, Inc. was located in

New Albany, Indiana and was a manufacturer of wood veneers for the architectural trade. Stern had about six salesmen nationwide. Mr. Adlerstein reported directly to the president. Because of the extensive negotiations necessary when dealing with architects, Mr. Adlerstein spent 95% of his time selling for this one account though it produced only two-thirds of his commissions. Thompson Mahogany Company is a manufacturer of wood veneer for furniture makers and musical instruments. About 10% of Mr. Adlerstein's commissions came from Thompson. Weber Veneer and Plywood Company accounted for 10% of Mr. Adlerstein's commissions.

3. Mr. Adlerstein worked from an office at 120 East 56th Street. The rent for this was paid directly by Stern. Mr. Adlerstein paid for the telephones in this office. Samples of Stern's woods were kept in the office. The stationery was furnished by the three companies.

4. Mr. Adlerstein covered a territory from Washington, D.C. to Hartford, Connecticut. Stern paid him \$200.00 a month toward his travel expenses and paid for airline flights when needed. Occasionally he would help out at shows at the Stern factory in the midwest and Stern would pay expenses for that. Stern also paid for a subscription to the Dodge reports.

5. Neither income tax nor social security tax is deducted from Mr. Adlerstein's compensation. He pays estimated taxes and self-employment tax. He is not covered by unemployment insurance.

6. The deficiency notice is dated April 11, 1969 and is in the amount of \$510.49 plus interest of \$55.61 for a total of \$566.10.

CONCLUSIONS OF LAW

The petitioner has not sustained the burden of proof that he is exempt from tax.

DECISION

The petition is denied and the deficiency is found correct as stated and is due together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
March 16, 1973

STATE TAX COMMISSION

Norman Gallivan

COMMISSIONER

Bruce Mauley

COMMISSIONER

Matthias Koerner

COMMISSIONER