

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MILTON M. BEINER

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 and 1967

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 27th day of March, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Milton M.
Beiner

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Milton M. Beiner
41-96 Gleane Street
Elmhurst, 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

27th day of March, 1972

Martha Funnaro

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

MILTON M. BEINER

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Tax Law for the (Year(s) 1965, 1966 and 1967

State of New York
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 27th day of March, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon
Jerome J. Feldman, C.P.A.
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Jerome J. Feldman, C.P.A.
90-26 161st Street
Jamaica, 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
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known address of the (representative of the) petitioner.

Sworn to before me this

27th day of March, 1972

Martha Furaw

Rae Zimmerman



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 27, 1972

Milton Beiner
41-96 Gleane Street
Elmhurst, New York

Dear Mr. Beiner:

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

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **four 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,

Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE TAX COMMISSION

Petitioner, Milton M. Beiner, has filed a petition for redeter-
mination 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. 7-78518694). 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 October 18, 1971 at 1:20 P.M.
Petitioner appeared by Jerome J. Feldman, C.P.A. The Income Tax
Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq.
of Counsel).

Did petitioner, Milton M. Beiner's selling activities during the years 1965, 1966 and 1967 constitute the carrying on of an unincorporated business?

1. Petitioner, Milton M. Beiner, and his wife filed New York State combined income tax returns for the years 1965, 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On February 4, 1970 the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Milton M. Beiner, imposing

unincorporated business tax upon the income received by him from his activities as a salesman during the years 1965, 1966 and 1967, and accordingly issued a Notice of Deficiency in the sum of \$710.26.

3. During the years 1965, 1966 and 1967 petitioner, Milton M. Beiner, was a cotton and urethane foam batting salesman. He sold cotton batting for Atlantic Cotton Felt Corp. and urethane foam batting for Perma-Foam, Inc. These firms were not affiliated. He sold their products generally to the same customers in the furniture and mattress manufacturing industries.

4. During the years 1965, 1966 and 1967 Atlantic Cotton Felt Corp. and Perma-Foam, Inc. did not withhold Federal and New York State income taxes and social security tax from the commissions paid to petitioner, Milton M. Beiner. He received a 5% commission on sales of cotton batting from Atlantic Cotton Felt Corp. instead of the customary 3% commission. He received a 7% commission on sales of urethane foam from Perma-Foam Inc. instead of the customary 5% commission. The additional commission percentage was paid in consideration for his activities in collecting delinquent accounts and in helping to prepare sample lines. He was not reimbursed for any of his business expenses. He deducted these business expenses on Schedule "C" of his federal income tax return. He maintained a self-employed pension fund. The firms for whom he sold merchandise did not exercise any supervision and control over his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell and the type of account on which he could call.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Milton M. Beiner, from the firms that he represented during the years 1965, 1966 and 1967 constituted income from his regular business of selling cotton and urethane foam batting and not compensation as an employee exempt from the imposition of the 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, Milton M. Beiner, 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 Milton M. Beiner is denied and the Notice of Deficiency issued February 4, 1970 is sustained.

DATED: Albany, New York

March 27, 1972

STATE TAX COMMISSION

Norman Bellman
COMMISSIONER

Beuse Hanley
COMMISSIONER

Milton Koenig
COMMISSIONER