

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID BLANK

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) 1963, 1964 :
and 1965.

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

State of New York
County of Albany

Lynn 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 31st day of May , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon DAVID BLANK

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

915 Willowbend Lane
Baldwin, New York 11510

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

31st day of May , 1972.

Martha L. Lunn

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID BLANK

For a Redetermination of a Deficiency or
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Tax Law for the (Year(s) 1963, 1964 :
and 1965

AFFIDAVIT OF MAILING
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BY (CERTIFIED) MAIL

State of New York
County of Albany

Lynn 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 31st day of May , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon EDWIN SHOR, 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: Edwin Shor, C.P.A.

26 Court Street
Brooklyn, 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

31st day of May , 1972

Martha F. ...

Lynn Wilson



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

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
May 31, 1972

David Blank
915 Willowbend Lane
Baldwin, New York 11510

Dear Mr. Blank:

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

Please take further notice that pursuant to
Section(s) **722** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
DAVID BLANK	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1963, 1964 and 1965.	:	

The petitioner applied for a redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1963, 1964 and 1965. The petitioner's applications were denied on June 24, 1968, under File No. 48060851. Petitioner applied for a hearing.

The hearing was held on October 14, 1970, at the offices of the State Tax Commission, 80 Centre Street, New York, New York before L. Robert Leisner, Hearing Officer. The petitioner was represented by Edwin Shor, C.P.A. and the Income Tax Bureau by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did the activities of David Blank as a sales representative for the Kenmar Manufacturing Company and several small incidental lines of furniture constitute the carrying on of an unincorporated business under section 703 of the Tax Law?

FINDINGS OF FACT

1. The Statement of Audit Changes was issued under File No. 48060851 for the years 1963, 1964 and 1965.
2. On denial of petitioner's application for a revision, the petitioner timely filed a petition for a formal hearing which was held on October 14, 1970.

3. Mr. Blank, the petitioner, took the position that he was an employee under section 704(f) of the Tax Law and not subject to unincorporated business tax.

4. Mr. Blank was employed by Kenmar Manufacturing Company for twenty-two years as a sales representative fully under its direction. Mr. Blank was required to devote his full working time to servicing accounts carrying Kenmar furniture, and all matters pertaining to the selling, distribution and follow-ups necessary to work with retail furniture and department stores. Mr. Blank worked in a designated territory.

5. When Mr. Blank sold the products of Kenmar Manufacturing Company, the pricing was controlled by the company and credit was passed on by the company.

6. Mr. Blank was required to handle complaints, take care of collections of delinquent accounts, and required to attend regular sales meetings of the company, working with retailers on consumer adjustments, and reporting on his sales activities to Kenmar.

7. The Kenmar Company leased a showroom in New York City and Mr. Blank was required to service it and keep it up to date.

8. Kenmar provided catalogues, samples and swatches of cloth.

9. Kenmar required Mr. Blank to sell its line before any other line and permission was required to take on other companies' lines which consisted of card tables and chairs, den barrel furniture and hammocks. Permission to handle these items was granted only so long as they did not require Mr. Blank's time in calling on accounts other than those to whom he sells Kenmar furniture.

10. For all of his services, Mr. Blank was compensated by commission and Kenmar income constituted at least two-thirds of Mr. Blank's income. The income from the incidental lines constituted approximately one-third of Mr. Blank's income for work as a

salesman and totaled \$5,086.90 in 1963, \$5,586.43 in 1964 and \$6,178.74 in 1965.

11. Mr. Blank was required to attend furniture shows at New York, Chicago and High Point, North Carolina.

12. Mr. Blank operated from his home and utilized a Schedule "C" on his federal return and took deductions for phone, postage, travel, entertainment and selling expense.

DECISION

A. Mr. Blank, a salesman, was an employee of Kenmar Manufacturing Company. His work for that company was not subject to unincorporated business tax.

B. The income petitioner derived from the incidental lines of card table sets and den barrel furniture and hammocks, was subject to unincorporated business tax. The amounts derived from the incidental lines are not great enough to be taxable under the unincorporated business tax law.

C. The petition of David Blank is sustained and it is determined that he has no deficiency in unincorporated business tax for the years 1963, 1964 and 1965.

DATED: Albany, New York

May 31, 1972.

STATE TAX COMMISSION

COMMISSIONER

Bruce Manley

COMMISSIONER

Mattias Koenig

COMMISSIONER