

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of  
IRWIN BOREN & ELLEN BOREN

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 & 1965 :

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

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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 1st day of August , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Irwin Boren &  
Ellen Boren (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Irwin & Ellen Boren  
796 Sacco Place  
North Bellmore, 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

1st day of August , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

IRWIN BOREN & ELLEN BOREN

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 & 1965 :

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 1st day of August , 1972 , she served the within  
Notice of Decision (or Determination) by (certified) mail upon Milton Hoffman

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

401 Broadway  
New York, New York 10013

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

1st day of August , 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

**August 1, 1972**

**Irwin & Ellen Boren  
796 Sacco Place  
North Bellmore, New York**

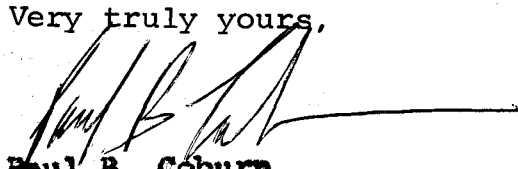
**Dear Mr. & Mrs. Boren:**

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,

  
**Paul B. Coburn**  
HEARING OFFICER

Enc.

cc: Petitioner's Representative  
Law Bureau

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
IRWIN BOREN AND ELLEN BOREN	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Personal Income and Unincorporated	:	
Business Taxes under Articles 22 and 23 of	:	
the Tax Law for the Years 1964, 1965 and	:	
1966.	:	

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Petitioners, Irwin Boren and Ellen Boren, have filed a petition for redetermination of deficiency or for refund of personal income and unincorporated business taxes under Articles 22 and 23 of the Tax Law for the years 1964, 1965 and 1966. (File Nos. 32080381 and 52092181). 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 January 21, 1972, at 9:20 A.M. Petitioners appeared by Milton Hoffman, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUE

Did petitioner, Irwin Boren's selling activities during the years 1964, 1965 and 1966, constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Irwin Boren and Ellen Boren, filed New York State income tax resident returns for the years 1964, 1965 and 1966. They filed New York State unincorporated business tax returns for the years 1964 and 1965, wherein petitioner, Irwin Boren, reported as business income the net income received by him as commissions from Lee Byron Corp. and Sobel and Goldman during the years 1964 and 1965. He omitted from business income, salary income paid to him by Lee Byron Corp. during the years 1964 and 1965.

2. On February 19, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Irwin Boren, imposing additional unincorporated business tax for the years 1964 and 1965 based upon the inclusion in business income of salary income received by him during said years and accordingly issued a Notice of Deficiency in the sum of \$481.72.

3. On September 2, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Irwin Boren and Ellen Boren, imposing additional unincorporated business tax and personal income tax for the year 1966 based upon federal audit changes and accordingly issued a Notice of Deficiency in the sum of \$541.31.

4. Petitioners, Irwin Boren and Ellen Boren, are not contesting the federal audit changes but are claiming that all of petitioner, Irwin Boren's income from his sales activities was not subject to unincorporated business tax and that, in addition to the cancellation of the unincorporated business tax portions of the assessment, they are entitled to a refund of unincorporated business tax paid during the years 1964, 1965 and 1966.

5. Petitioner, Irwin Boren, was a men's and boys pants and accessories salesman during the years 1964, 1965 and 1966. He represented two unaffiliated firms in the sale of these products. The products sold by him for each firm were noncompetitive. He did not have any employees.

6. During the year 1964 and part of the year 1965, one of the firms for whom he sold merchandise withheld Federal and New York State income taxes and social security tax from a portion of the compensation paid to him. This practice was discontinued when it adopted a pension plan for its employees in 1965. It did not withhold these taxes from the balance of his commissions for said years or

for the year 1966. The other firm did not withhold these taxes from the commissions paid to him for said years. He was not reimbursed for any of his business expenses. He did not have a written employment contract. The firms for whom he sold merchandise did not exercise any substantial supervision or control over his sales activities and techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Irwin Boren, from the two firms that he represented during the years 1964, 1965 and 1966 constituted income from his regular business of selling men's and boys pants and accessories 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, Irwin Boren, during the years 1964, 1965 and 1966 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 Irwin Boren and Ellen Boren is denied and the notices of deficiency issued February 19, 1968, and September 2, 1969, are sustained.

DATED: Albany, New York

*August 1, 1972*

STATE TAX COMMISSION

*Norman Sullivan*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Mauley*  
\_\_\_\_\_  
COMMISSIONER

*William Krum*  
\_\_\_\_\_  
COMMISSIONER