

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOHN J. BRUCE

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) 1961 and 1962;

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 Thomas H. Cullinan, Esq., (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Thomas H. Cullinan, Esq.
686 Port Washington Boulevard
Port Washington, N.Y. 11050

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

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

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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 John J. Bruce

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

wrapper addressed as follows: John J. Bruce
Norfolk Lane
Glen Cove, New York 11542

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

Lynn Wilson

Rae Zimmerman



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
March 27, 1972

John J. Bruce
Norfolk Lane
Glen Cove, New York 11542

Dear Mr. Bruce:

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 OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JOHN J. BRUCE	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1961 and 1962.	:	

Petitioner, John J. Bruce, 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 1961 and 1962. (File No. 2-6412330). 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 December 15, 1971, at 10:20 A.M. Petitioner appeared by Thomas H. Cullinan, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUES

I. Did petitioner, John J. Bruce's activities as a women's dress salesman during the years 1961 and 1962 constitute the carrying on of an unincorporated business?

II. If petitioner, John J. Bruce, was carrying on an unincorporated business during the years 1961 and 1962, what portion of the income derived therefrom should be allocated to New York State?

FINDINGS OF FACT

1. Petitioner, John J. Bruce, and his wife filed New York State income tax resident returns for the years 1961 and 1962. He did not file New York State unincorporated business tax returns for said years.

2. On March 11, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, John J. Bruce, imposing unincorporated business tax upon the income received by him from his

activities as a salesman during the years 1961 and 1962 and accordingly issued a Notice of Deficiency in the sum of \$1,344.38.

3. Petitioner, John J. Bruce, was a women's dress salesman during the years 1961 and 1962. He represented two or three unaffiliated firms in the sale of women's dresses. The products sold by him for each firm were noncompetitive.

4. The firms for whom petitioner, John J. Bruce, sold women's dresses did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him during the years 1961 and 1962. They did not cover him for unemployment insurance. They did not reimburse him for any of his business expenses. He deducted these expenses on Schedule "C" of his federal income tax returns. The firms for whom he sold merchandise did not exercise any substantial direction 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.

5. Petitioner, John J. Bruce, sold women's dresses during the years 1961 and 1962, in Maine, New Hampshire, Vermont, Massachusetts, Connecticut, Rhode Island, Philadelphia, Baltimore and Washington. All of his sales were made outside of New York State. He maintained his office and business headquarters at the New York City office of one of the firms for whom he sold merchandise. He generally displayed his merchandise in his hotel room in the various cities that he visited. He had no regular place of business outside of New York State.

6. On February 25, 1964, a Senior Administrative Tax Supervisor sent a letter to Raymond T. Hyer, C.P.A., regarding the unincorporated business tax liability of various individuals including petitioner, John J. Bruce. The letter contains only the following statement with reference to him: "Unincorporated business tax liability of John J. Bruce - none."

CONCLUSIONS OF LAW

A. That the income received by petitioner, John J. Bruce, from the two or three firms that he represented during the years 1961 and 1962 constituted income from his regular business of selling women's dresses 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 since petitioner, John J. Bruce, did not have a regular place of business outside of New York State during the years 1961 and 1962, all of his business income, including that income derived from out-of-state sales, was properly allocated to New York State in accordance with the meaning and intent of section 707(a) of the Tax Law.

C. That the aforesaid activities of petitioner, John J. Bruce, during the years 1961 and 1962, 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.

D. That the State Tax Commission, in determining the unincorporated business tax liability of petitioner, John J. Bruce, for the years 1961 and 1962 is not bound by the statement made in the letter of February 25, 1964, sent by a Senior Tax Administrative Supervisor of the Department of Taxation and Finance.

E. That the petition of John J. Bruce is denied and the Notice of Deficiency issued March 11, 1968, is sustained.

DATED: Albany, New York

STATE TAX COMMISSION

March 27, 1972

Norman Gullman
COMMISSIONER

Bruce Hanley
COMMISSIONER

Milton Kaim
COMMISSIONER