

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

PAUL FELD

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

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 3rd day of April , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Paul Feld

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Paul Feld
906 Edgewood Drive
Westbury, 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

3rd day of April , 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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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 3rd day of April , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Murray Hendel

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Murray Hendel
401 Broadway
New York, 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

3rd day of April , 1972

Rae Zimmerman

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

April 3, 1972

**Paul Feld
906 Edgewood Drive
Westbury, New York**

Dear Mr. Feld:

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 **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,

Paul E. Caburn

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
PAUL FELD : DECISION
for Redetermination of Deficiency or :
for Refund of Unincorporated Business :
Tax under Article 23 of the Tax Law :
for the Year 1965. :
:

Petitioner, Paul Feld, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1965. (File No. 38634269). 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 21, 1971, at 9:15 A.M. Hendel & Hendel, C.P.A.'s by Murray Hendel, C.P.A., appeared for petitioner. Edward H. Best, Esq., (Albert J. Rossi, Esq. of Counsel) appeared for the Income Tax Bureau.

ISSUE

Did petitioner, Paul Feld's selling activities during the year 1965 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Paul Feld, and his wife filed a New York State combined income tax return for the year 1965. He did not file a New York State unincorporated business tax return for said year.
2. On February 26, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Paul Feld, imposing unincorporated business tax upon the income received by him from

his activities as a salesman during the year 1965. It also imposed a penalty of \$211.59 for failure to file a New York State unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,152.58.

3. During the year 1965 petitioner, Paul Feld, was a ladies' robe and lingerie salesman. He represented two unaffiliated firms in the sale of said items. The products sold by him for each firm were noncompetitive. He did not have any employees.

4. During the year 1965 the firms for whom petitioner, Paul Feld, sold merchandise, withheld Federal and New York State income taxes and social security tax from the commissions paid to him. They covered him for workmen's compensation, unemployment, disability, and health insurance. He was not reimbursed for any of his business expenses. He deducted his business expenses from his gross commissions on his federal income tax return. The firms for which he sold merchandise did not exercise any substantial supervision or 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.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Paul Feld, from the firms he represented during the year 1965 constituted income from his regular business of selling ladies' robes and lingerie 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, Paul Feld, during the year 1965 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 Paul Feld is denied and the Notice of Deficiency issued February 26, 1968, is sustained.

DATED: Albany, New York
April 3, 1972

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Bruce Masley
COMMISSIONER

William J. Coen
COMMISSIONER