

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
SAM FERTMAN

:
:
:
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) 1962, 1963 & 1964

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 23rd day of February, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Sam Fertman

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

wrapper addressed as follows: Sam Fertman
2247 East 28 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

23rd day of February, 1972.

Rae Zimmerman

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

SAM FERTMAN

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) 1962, 1963 & 1964

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 23rd day of February , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Alvin Goidel, Esq.

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

wrapper addressed as follows: Alvin Goidel, Esq.
111 Fulton Street
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
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Rae Zimmerman

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION

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

BUILDING 9, ROOM 214A

STATE CAMPUS
ALBANY, N. Y. 12227

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

February 23, 1972

**Sam Fortman
2247 East 28 Street
Brooklyn, New York**


Dear Sir:

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 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 relating hereto may be
addressed to the undersigned. These will be referred
to the proper party for reply.

Very truly yours,


Lawrence A. Newman
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
SAM FERTMAN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1962, 1963 and 1964.	:	

Sam Fertman petitioned for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the years 1962, 1963 and 1964. A formal hearing was held before Lawrence A. Newman, Hearing Officer, in the offices of the State Tax Commission in the City of the New York on April 1, 1971. The petitioner appeared and was represented by Alvin I. Goidel, Esq. The Income Tax Bureau was represented by Edward H. Best, Esq., (Solomon Sies, Esq., of Counsel).

ISSUE

Whether the sales activities of the petitioner constituted the carrying on of an unincorporated business, and the income derived therefrom subject to the unincorporated business tax.

FINDINGS OF FACT

1. Sam Fertman and Esther Fertman, his wife, filed New York State income tax resident returns for the years 1962, 1963 and 1964, but did not file unincorporated business tax returns.

2. On January 16, 1967, the Income Tax Bureau issued a Notice of Deficiency under file numbered 26011851, for the years 1962, 1963 and 1964 in the amount of \$1,555.34 plus delinquency penalties of 25% and statutory interest.

The deficiency was based on a finding by the Income Tax Bureau that the petitioner's activities constituted the carrying on of an

unincorporated business, and the income derived therefrom was subject to the unincorporated business tax.

3. Sam Fertman filed a timely petition for redetermination of the deficiency.

4. The petitioner was sales representative for eight separate manufacturers of noncompeting lines of costume jewelry. The petitioner was assigned a specific geographical area by each firm, and was compensated by commissions based upon the sales price of the merchandise shipped to customers by his principals.

5. Except for small amounts allowed for fashion shows, the petitioner was not reimbursed for his expenses. The petitioner rented and maintained an office in which he had a desk, table and files, and employed a secretary to take care of telephone calls and mail. Other expenses claimed on the petitioner's federal income tax return for the year 1963 included hotels, travel, entertaining, taxis, automobile expenses, porters, office and selling expenses, advertising, stationery and rental of sample rooms. On his tax return for the year 1963, the petitioner reported gross receipts of \$40,583.39 on federal form 1040C (profit from business or profession) from which he deducted business expenses of \$23,661.57.

6. On his New York State tax returns, the petitioner described himself as a selling agent, and on his federal returns as a sales representative. The petitioner's commissions earned were not subject to withholding of income taxes or social security, and he was not included in the pension plans or other "fringe" benefits which his eight principals may have provided for their employees.

7. Although the eight principals knew and accepted the fact that the petitioner represented them all, there was no specific division of time amongst them for the promotion of their respective products. The petitioner would visit each principal about once a week to report his sales and confer about new lines. The petitioner was not involved in billings or collections from customers.

8. The petitioner has failed to prove that the usual characteristics of an employer-employee relationship existed between the petitioner and his eight principals.

9. The petitioner is not an employee of his eight principals.

DECISION

A. The petitioner's sales activities constituted the carrying on of an unincorporated business within the meaning and intent of Article 23 of the Tax Law, and the income derived therefrom was subject to the unincorporated business taxes.

B. The deficiency is sustained and the petition is denied.

DATED: Albany, New York
February 23, 1973

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Russ Manley
COMMISSIONER

Wilton Koenig
COMMISSIONER