

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
STANLEY FISHNER

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) 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 3rd day of May , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Stanley Fishner

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

wrapper addressed as follows: Stanley Fishner
1828 St. Roman Drive
Vienna, Virginia 22180

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 May , 1972.

Lynn Wilson

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

May 3, 1972

Stanley Fishner
1828 St. Roman Drive
Vienna, Virginia 22180

Dear Mr. Fishner:

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,

L. Robert Leisner
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
STANLEY FISHNER	:	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 and 1964.	:	

Stanley Fishner petitioned for a redetermination of a deficiency in unincorporated business taxes for the years 1963 and 1964. A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, Utica, New York, on November 17, 1970.

The petitioner appeared personally in his own behalf, and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

I. Were the activities of Stanley Fishner in 1963 and 1964 subject to unincorporated business tax?

II. Was he subject to the 25% penalty for failure to file a return?

FINDINGS OF FACT

1. Petitioner timely filed personal income tax returns for 1963 and 1964 but did not file unincorporated business tax returns for those years.

2. On January 16, 1967, the Income Tax Bureau issued a Notice of Deficiency determining deficiencies in unincorporated business taxes for the years 1963 and 1964 on the ground that petitioner's activities in those years as a manufacturer's representative constituted the carrying on of an unincorporated business.

3. Petitioner timely filed a petition for redetermination of the deficiencies and asserted he was not carrying on an unincorporated business and was an employee, and that no penalty should be asserted against him.

4. Petitioner had a business background with a B.S. in marketing and economics from the University of Illinois. Petitioner was registered with the government as a consultant and he represented three or four manufacturing concerns as a consultant working in the contract procurement field to obtain contracts largely from the Department of Defense.

5. The petitioner worked on retainers and also on commissions in some instances. In one instance, I.T.A. Electronics, there was withholding and payroll deductions in 1963.

6. Petitioner had separate business cards for each concern indicating that he represented the concern.

7. Petitioner's hours were not spelled out or set, although in some instances it was expected that petitioner would devote a certain number of hours weekly to a particular concern. The concerns did not know the number of hours he spent working for other corporations.

8. Petitioner worked out of his home and had a room with his reference material, phone, papers, and filing cabinet and depreciable office furniture. Petitioner had an answering service.

9. Petitioner had a Schedule "C" with detailed business expenses and self employment tax for social security.

10. Petitioner took out his own executive life insurance policy.

11. Petitioner believed that his work was employment exempt from unincorporated business tax.

CONCLUSIONS OF LAW

A. The activities of Stanley Fishner in 1963 and 1964 constituted the carrying on of an unincorporated business and were subject to unincorporated business tax.

B. The petitioner acted in good faith in not filing an unincorporated business tax return, and the penalty is cancelled.

C. In all other respects the petition is denied and the determination of the deficiencies in unincorporated business taxes for 1963 and 1964 is sustained.

D. Pursuant to the Tax Law, interest shall be added to the total amount due until paid.

DATED: Albany, New York

May 3, 1972

STATE TAX COMMISSION

Norman Gallivan

COMMISSIONER

Barry Manley

COMMISSIONER

Milton Korman

COMMISSIONER