

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LEONARD GAINES AND EVELYN GAINES

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 and 1965.

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 4th day of April, 1972 she served the within
Notice of Decision (or Determination) by (certified) mail upon Leonard Gaines and
Evelyn Gaines

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Leonard Gaines and Evelyn Gaines
225 East 73rd 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
known address of the (representative of the) petitioner.

Sworn to before me this

4th day of April, 1972

Lynn Wilson

Rae Zimmerman

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
LEONARD GAINES AND EVELYN GAINES :

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 and 1965.

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 4th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon
Harry Wasserman, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
Harry Wasserman, Esq.
wrapper addressed as follows: c/o Cogan & Bell
350 Fifth Avenue
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

4th day of April, 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
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 4, 1972

Leonard Gaines and Evelyn Gaines
225 East 73rd Street
New York, New York

Dear Sir and Madam:

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. Coburn

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
LEONARD GAINES AND EVELYN GAINES	:	
for Redetermination of Deficiency or	:	DECISION
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1963, 1964 and 1965.	:	

Petitioners, Leonard Gaines and Evelyn Gaines, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963, 1964 and 1965. (File No. 48047852). 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 June 16, 1971, at 9:15 A.M. Cogan & Bell, C.P.A.'s, by Harry Wasserman appeared for petitioners. Edward H. Best, Esq. (Albert J. Rossi, Esq., of Counsel) appeared for the Income Tax Bureau.

ISSUES

I. Did petitioner, Leonard Gaines' selling activities during the years 1963, 1964 and 1965 constitute the carrying on of an unincorporated business?

II. Did petitioner, Leonard Gaines, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1963, 1964 and 1965?

FINDINGS OF FACT

1. Petitioners, Leonard Gaines and Evelyn Gaines, filed New York State income tax resident returns for the years 1963 and

1964 and a New York State combined income tax return for the year 1965. They did not file any New York State unincorporated business tax returns for said years.

2. On April 29, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Leonard Gaines and Evelyn Gaines, imposing unincorporated business tax upon the income received by petitioner, Leonard Gaines, from his activities as a salesman during the years 1963, 1964 and 1965. It also imposed a penalty of \$1,295.73 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$7,348.97.

3. Petitioner, Leonard Gaines, was a women's blouse and sportswear salesman during the years 1963, 1964 and 1965. He represented two unaffiliated firms in the sale of said products. The items sold by him for each firm were noncompetitive. They were generally sold to the same customers.

4. One of the firms for whom petitioner, Leonard Gaines, sold merchandise did not withhold Federal and New York State income tax and social security tax from the commissions paid to him. The other firm only withheld these taxes from the draw against commissions paid to him. He was not reimbursed for any of his business expenses. He deducted these business expenses on Schedule "C" of his federal income tax returns. These expenses included the salaries of chauffeurs employed by him, bonuses paid to a trainee salesman for his efforts in assisting him to cover his territory, the cost of cooperative advertising with customers, and the cost of samples

and sample racks. 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.

5. Petitioner, Leonard Gaines, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1963, 1964 and 1965.

6. Petitioner, Evelyn Gaines, was not engaged in an unincorporated business during the years 1963, 1964 and 1965.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Leonard Gaines, from the two firms he represented during the years 1963, 1964 and 1965, constituted income from his regular business of selling women's blouses and sportswear 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, Leonard Gaines, during the years 1963, 1964 and 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 petitioner, Leonard Gaines, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1963, 1964 and 1965, and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That since petitioner, Evelyn Gaines, was not engaged in an unincorporated business during the years 1963, 1964 and 1965, she was not liable for unincorporated business tax for said years.

E. That the petition of Leonard Gaines and Evelyn Gaines is granted to the extent of cancelling the Notice of Deficiency issued April 29, 1968, as against petitioner, Evelyn Gaines and of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1963, 1964 and 1965 and the Notice of Deficiency issued April 29, 1968, as against petitioner Leonard Gaines, is reduced from \$7,348.97 to \$6,053.24 together with such interest as may be due from April 29, 1968, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

April 4, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Mancus

COMMISSIONER

Milton Korman

COMMISSIONER