

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD A. JONES

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 :  
and 1964

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Lynn Wilson , 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 6th day of April , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon GERALD A. JONES  
(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Gerald A. Jones  
202 Westwood Road  
Syracuse, New York 13202  
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

6th day of April , 19 72

Rae Zimmerman

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

GERALD A. JONES

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 and  
1964

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Lynn Wilson, 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 6th day of April, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon ELMER SHAW

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Elmer Shaw

Suite 700, Empire Bldg.  
472 South Salina Street  
Syracuse, New York 13202

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

6th day of April, 1972

Rae Zimmerman

Lynn Wilson



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  
**April 6, 1972**

**Mr. Gerald A. Jones**  
**202 Westwood Road**  
**Syracuse, New York 13202**

**Dear Mr. Jones:**

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

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|--|---|----------|
| In the Matter of the Petition            | : |          |
| of                                       | : |          |
| GERALD A. JONES                          | : | DECISION |
| for a 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.       | : |          |

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Gerald A. Jones petitioned for a redetermination of a deficiency in unincorporated business tax under Article 23 of the Tax Law for the years 1962, 1963 and 1964. A formal hearing was held at the offices of the State Tax Commission at the State Office Building, Syracuse, New York on March 31, 1971 before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Elmer Shaw, C.P.A. and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Did the activities of Gerald A. Jones, as a sales representative in 1962, 1963 and 1964, constitute the carrying on of an unincorporated business under section 703 of the Tax Law?

FINDINGS OF FACT

1. Petitioner, Gerald A. Jones, timely filed New York State income tax returns but did not file unincorporated business tax returns for the years 1962, 1963 and 1964.

2. A Notice of Determination of a deficiency in unincorporated business tax for the years 1962, 1963 and 1964 was issued on October 17, 1966, against Gerald A. Jones under File No. 26082202. The taxpayer petitioned for a redetermination of the deficiency.

3. Petitioner was a confectionery manufacturer's representative during all the years in issue.

4. Petitioner represented two or more companies during each year in issue strictly on a commission basis.

5. Petitioner did not maintain an office or showrooms. Petitioner had no employees except when in 1964, he had a man with him who received more than 20% of petitioner's commissions.

6. Petitioner worked entirely on his own with no supervision from any principals.

7. There was no arrangement between the principals as to supervision of time.

8. During each year, petitioner filed a Schedule "C" with his federal return with business income and expenses.

9. Petitioner was not subject to withholding tax.

10. Petitioner failed to show whether his contracts with the companies were verbal or written and what controls, if any, were imposed by the various firms.

CONCLUSIONS OF LAW

A. Petitioner, Gerald A. Jones, was an independent sales agent and subject to the unincorporated business tax under section 703 of the Tax Law.

B. The Notice of Determination of deficiency in unincorporated business tax is sustained in all respects.

C. Pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York

*April 6, 1972.*

STATE TAX COMMISSION

*Norman Gallman*  
\_\_\_\_\_  
COMMISSIONER  
*Bruce Nanley*  
\_\_\_\_\_  
COMMISSIONER  
*Matthias Hume*  
\_\_\_\_\_  
COMMISSIONER