

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY KAYE & EVELYN KAYE

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 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 5th day of April, 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon HARRY KAYE & EVELYN KAYE (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Harry & Evelyn Kaye
2 Gold Circle
Freeport, 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

5th day of April, 1972

Martha Furrer

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HARRY KAYE & EVELYN KAYE

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 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 5th day of April , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon ALVIN I.
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 I. Goidel, Esq.

111 Fulton Street
New York, New York 10038

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

5th day of April , 19 72

Martha Funnell

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 5, 1972

Harry & Evelyn Kaye
2 Gold Circle
Freeport, New York

Dear Sir & Madam:

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,

Paul B. Coburn
Hearing Officer

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
of	:	
HARRY KAYE & EVELYN KAYE	:	DECISION
for Redetermination of Deficiency or for	:	
Refund of Unincorporated Business Tax under	:	
Article 23 of the Tax Law for the Years 1963	:	
and 1964.	:	
	:	

Petitioners, Harry Kaye and Evelyn Kaye, have filed petitions for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1963 and 1964. (File Nos. 3-8026924 and 12643198). 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 March 24, 1971, at 10:15 A.M. Petitioners appeared by Alvin I. Goidel, Esq. The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert Rossi, Esq., of Counsel).

ISSUES

I. Did the selling activities of petitioner, Harry Kaye, during the years 1963 and 1964 constitute the carrying on of an unincorporated business?

II. Did the Income Tax Bureau correctly assess a "delinquency penalty" against petitioner, Harry Kaye, for the taxable year 1964?

FINDINGS OF FACT

1. Petitioners, Harry Kaye and Evelyn Kaye, filed New York State income tax resident returns for the years 1963 and 1964.

Petitioner, Harry Kaye, filed New York State unincorporated business tax returns for said years. In said returns, he alleged that his sales activities were not subject to New York State unincorporated business tax.

2. On February 20, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Harry Kaye and Evelyn Kaye, imposing unincorporated business tax upon the income received by him as a shoe salesman during the year 1963. It also made an adjustment for additional business income as a result of a Federal audit, which adjustment is not being contested by petitioners. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$531.15.

3. On March 11, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Harry Kaye, imposing unincorporated business tax in the sum of \$51.88 upon the income received by him as a shoe salesman during the year 1964. It also imposed a "delinquency penalty" in the sum of \$12.97. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$73.87.

4. Petitioner, Harry Kaye, was a shoe salesman during the years 1963 and 1964. He represented Deb Shoe Company in the sale of its shoes to retail outlets. He did not sell shoes for any other companies.

5. During the years 1963 and 1964 petitioner, Harry Kaye was paid by Deb Shoe Company on a commission basis. The commission was paid on gross sales less allowances. It withheld social security tax from the commissions paid to him. It did not withhold New York

State and Federal income taxes. It did not reimburse him for any expenses incurred in his selling activities. He deducted expenses incurred in connection with his sales activities on Schedule "C" of his Federal income tax returns. He maintained an office on the premises of Deb Shoe Company. He reimbursed it for 1/3 of the rent that it paid to the landlord of the premises. He employed a bookkeeper at the offices. He had a business listing in the telephone directory under his own name. He did not have a written employment contract with Deb Shoe Company. Deb Shoe Company did not exercise any control or supervision over his sales activities or techniques or to the time he devoted to sales except to require him to file weekly reports describing whom he had met with, how much he had sold and if a sale was not made, the reasons why.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Harry Kaye, from Deb Shoe Company during the years 1963 and 1964 constituted income from his regular business of selling shoes and not compensation as an employee exempt from the imposition of 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, Harry Kaye, during the years 1963 and 1964 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

C. That since petitioner, Harry Kaye, timely filed a New York State unincorporated business tax return for the year 1964, he is not

subject to the imposition of a "delinquency penalty."

D. That the petition of Harry Kaye and Evelyn Kaye for the taxable year 1963 is denied and the Notice of Deficiency issued February 20, 1967, is sustained.

E. That the petition of Harry Kaye and Evelyn Kaye for the year 1964 is granted to the extent of cancelling the "delinquency penalty" in the sum of \$12.97 and the Notice of Deficiency issued March 11, 1968, is reduced from \$73.87 to \$60.90 together with such interest as may be due from March 11, 1968, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

April 5, 1972.

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Marley

COMMISSIONER

Milton Kerner

COMMISSIONER