

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

HERBERT & BARBARA KIBEL

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) 1965 :

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 21st day of August , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon HERBERT &
BARBARA KIBEL (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Herbert & Barbara Kibel
130 Maytime Drive
Jericho, 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

21st day of August , 1972.

Maitha Funnars

Lynn Wilson



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A
STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518
457-2655, 6, 7

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

DATED: Albany, New York
August 21, 1972

**Herbert and Barbara Kibel
130 Maytime Drive
Jericho, New York**

Dear Mr. and Mrs. Kibel:

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,

Nigel G. Wright
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
HERBERT & BARBARA KIBEL	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1965.	:	

Herbert and Barbara Kibel filed a petition pursuant to sections 722 and 689 of the Tax Law for the redetermination of a deficiency dated September 29, 1969, in unincorporated business tax under Article 23 of the Tax Law for the year 1965.

A hearing was held on August 10, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City, before Nigel G. Wright, Hearing Officer. The petitioner was not represented. The Income Tax Bureau was represented by Edward H. Best, Esq. (Francis X. Boylan, Esq., of Counsel).

The record of said hearing has been duly examined and considered.

ISSUE

The issue in this case is whether a sales representative is subject to unincorporated business tax.

FINDINGS OF FACT

1. Mr. Kibel is a New York resident and a salesman of men's clothing.

2. Mr. Kibel represented four companies in 1965: Ramar Shirt Co. of New York City, from which he received three-fourths of his commissions; Shelby Clothes, Inc. of Baltimore, a maker of young men's

slacks; an affiliate of Shelby, Casual Slacks, Inc. of Baltimore; and John A. Cooper of Los Angeles, for whom he made a few casual sales only.

3. Mr. Kibel was compensated on a straight commission basis with advances given against commissions. His expenses amounted to about one-third of his commissions and were not reimbursed.

4. Mr. Kibel covered a territory covering New England and New York. He was expected to find his own customers. He was given two major lines a year. He spent about 100 days a year traveling, usually spending weekends at home. He filed written reports with Ramar, but this was on a voluntary basis.

5. Mr. Kibel used a room in his house as an office. No office space was assigned to him by his principals.

6. Mr. Kibel had worked for Oxford Boyswear, Inc. of New York City from 1950 to 1964. Around 1962 another salesman at Oxford referred him to Ramar. After he started with Ramar, he found that many salesmen handled both Ramar and the Shelby-Casual lines whose owners were close personal friends. Mr. Kibel took on Shelby and Casual and eventually dropped Oxford, a competing line. In 1966, Ramar and Shelby merged and in 1967 went into a Chapter 11 proceeding but Mr. Kibel remained with it and its successor firm until early 1971.

7. Oxford had withheld federal income and social security taxes and when Mr. Kibel dropped Oxford to go with Shelby, Shelby did the same.

8. The deficiency in issue amounts to \$266.37 plus interest of \$55.22 for a total of \$321.59.

CONCLUSIONS OF LAW

The petitioner has not carried the burden of proof that he is an employee and is subject to unincorporated business tax.

DECISION

The petition is denied and the deficiency is found to be correct and is due with such interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York

STATE TAX COMMISSION

August 21, 1972.

Norman Gallen

COMMISSIONER

Bruce Manley

COMMISSIONER

Milton Korman

COMMISSIONER