

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK B. MENDELSON & JEAN
MENDELSON

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

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

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 19th day of July , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon Jack B. Mendelsohn and Jean Mendelsohn (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Jack B. & Jean Mendelsohn
1245 Avenue X
Brooklyn, 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

19th day of July , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JACK B. MENDELSON & JEAN
MENDELSON

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

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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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 19th day of July, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Benjamin Cooper, C.P.A.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Benjamin Cooper, C.P.A.
Korse, Cooper & Rothkopf
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

19th day of July, 1972.

Lynn Wilson

Martha Funaro



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

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated: Albany, New York

July 19, 1972

Jack B. & Jean Mendelsohn
1245 Avenue X
Brooklyn, New York

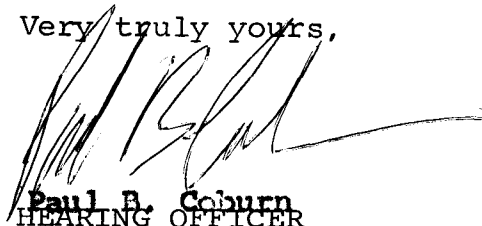
Dear Mr. & Mrs. Mendelsohn:

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 deci-
sion must be commenced within **4 Months**
from 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 relative
hereto may be addressed to the undersigned.
These will be referred to the proper party for
reply.

Very truly yours,



Paul R. Coburn
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
JACK B. MENDELSON AND	:	DECISION
JEAN MENDELSON	:	
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Year 1962.	:	

Petitioners, Jack B. Mendelsohn and Jean Mendelsohn, have filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1962. (File No. 2-3152578). A formal hearing was held before Evelyn King, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on May 6, 1968, at 10:00 A.M. Petitioner appeared by Benjamin Cooper, C.P.A.

ISSUE

Did petitioner, Jack B. Mendelsohn's selling activities during the year 1962 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Jack B. Mendelsohn and Jean Mendelsohn, filed a New York State income tax resident return for the year 1962. They did not file a New York State unincorporated business tax return for said year.

2. On February 8, 1965, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Jack B. Mendelsohn and Jean Mendelsohn, imposing unincorporated business tax upon the income received by petitioner, Jack B. Mendelsohn, from his activities as a salesman during the year 1962 and accordingly issued a Notice of Deficiency in the sum of \$614.18.

3. Petitioner, Jack B. Mendelsohn, was a metal products salesman during the year 1962. He sold metal products for 12 unaffiliated firms. The products sold by him for each firm were noncompetitive. He sold their products to generally the same customers. Approximately 60% of his sales were made for one of the firms that he represented.

4. The firms for which petitioner, Jack B. Mendelsohn, sold metal products during the year 1962 did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him. They did not cover him for unemployment insurance. He was not reimbursed for any of his business expenses. He deducted his business expenses on Schedule "C" of his Federal income tax return. He maintained his own offices and letterheads. 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, Jean Mendelsohn, was not employed or engaged in an unincorporated business during the year 1962.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Jack B. Mendelsohn, from the firms he represented during the year 1962 constituted income from his regular business of selling metal products 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, Jack B. Mendelsohn, during the year 1962 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 since petitioner, Jean Mendelsohn, was not engaged in an unincorporated business during the year 1962, she was not liable for unincorporated business tax for said year.

D. That the petition of Jack B. Mendelsohn and Jean Mendelsohn, is granted to the extent of cancelling the Notice of Deficiency issued February 8, 1965, as against petitioner, Jean Mendelsohn, and except as so granted, the petition is in all other respects denied and the Notice of Deficiency issued February 8, 1965, as against petitioner, Jack B. Mendelsohn, is sustained.

DATED: Albany, New York

July 19, 1972

STATE TAX COMMISSION

Norman Gallman
COMMISSIONER

Robert M. Mawley
COMMISSIONER

Milton Korman
COMMISSIONER