

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD MEYERS

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

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 16th day of March , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Burton A.
Friedman, Esq. (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Burton A. Friedman, Esq.
225 West 34th Street
New York, New York 10001

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

16th day of March , 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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BERNARD MEYERS

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business;
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Tax Law for the (Year(s) 1965

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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 16th day of March , 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Bernard Meyers

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: Bernard Meyers
434 Beach 136th Street
Belle Harbor, 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

16th day of March , 1972.

Lynn Wilson

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

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

March 16, 1972

Bernard Meyers
434 Beach 136th Street
Belle Harbor, New York

Dear Mr. Meyers:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 722**
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	:	
BERNARD MEYERS	:	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.	:	

Bernard Meyers filed a petition for a redetermination of a deficiency in unincorporated business taxes under Article 23 of the Tax Law for the year 1965.

A hearing was held before Nigel G. Wright, Hearing Officer, on June 23, 1971, at the offices of the State Tax Commission, 80 Centre Street, New York City. Burton A. Friedman, Esq., appeared for the petitioner. Edward H. Best, Esq., (Francis X. Boylan, Esq., of Counsel) appeared for the Income Tax Bureau.

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

ISSUE

The issue in this case is whether the petitioner, a salesman, is conducting his own business subject to tax under Article 23 of the Tax Law or whether he is an employee.

FINDINGS OF FACT

1. Petitioner is a resident of Belle Harbor, New York. For 13 years he has been a salesman for one company, Aristocrat Upholstery Company, Inc. He represents no one else on a regular basis and during 1965 had commissions of less than \$150 from other principals.

2. Aristocrat Upholstery Company, Inc. has its only office and factory in Bridgeport, Pennsylvania. It is a small company manufacturing medium priced custom made upholstery which it sells to retail stores. It has two or three other salesmen besides petitioner who cover other parts of the country. Each year Aristocrat has two lines and two factory showings of three or four weeks each. During the year it will have "special" sales which the salesmen will bring to the attention of customers.

3. Mr. Meyers covers his territory by daily trips from his home. He is seldom away overnight. Some large department stores in New York City he will see weekly. Other customers he will see less often. When the company has shows he usually goes to the factory daily--a two hour trip taking one of his customers each day. Mr. Meyers helps his customers in the display of merchandise and in discarding obsolete samples.

4. Mr. Meyers contacts Aristocrat every day by telephone. He contacts the president of Aristocrat directly. He does not write written reports. He uses space at his home for business reasons and deducted the expense thereof on his tax returns. He has no office-type furniture. Mr. Meyers uses letterheads and business cards with the name of Aristocrat only.

5. Neither Federal and New York State income taxes are withheld from Mr. Meyers' compensation. Social security taxes are not withheld. He paid New York City gross receipts taxes. Mr. Meyers pays federal self-employment tax and makes payments toward a "Keogh Plan Retirement Fund". He is part of Aristocrat's Health Insurance Plan. He is not reimbursed for his expenses. These are

made up largely of automobile expenses, entertainment and gifts and telephone and amount to less than one-fifth of his commissions.

CONCLUSIONS OF LAW

A. Petitioner has not carried the burden of proof that he is exempt from tax.

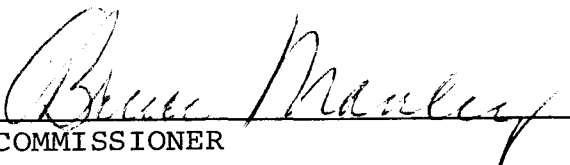
DECISION

The petition is denied and the deficiency is found due together with such interest, if any, as may be due under section 684 of the Tax Law.

DATED: Albany, New York
March 16, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER