

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD POCHTER

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, :  
1964 and 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 2nd day of March, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon LEONARD POCHTER

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Leonard Pochter  
25 East 86th Street  
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

2nd day of March, 1972.

Rae Zimmerman

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD POCHTER

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, :  
1964 and 1965.

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
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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 2nd day of March, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon CARL MUR, ESQ.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Carl Mur, Esq.  
350 Fifth Avenue  
Suite 5008  
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

2nd day of March, 1972.

Rae J. J. J. J.

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

LEONARD POCHTER

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,  
1964 and 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 2nd day of March, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon HENRY BASS, 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: Henry Bass, C.P.A.  
Kalow & Bass  
570 Seventh 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

2nd day of March, 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  
**March 2, 1972**

**Leonard Pochter**  
**25 East 86th Street**  
**New York, New York**

**Dear Mr. Pochter:**

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

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In the Matter of the Petition	:	
of	:	
LEONARD POCHTER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1962, 1963, 1964 and 1965.	:	

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Petitioner, Leonard Pochter, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1962, 1963, 1964 and 1965. (File No. 48021807). 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 May 20, 1971, at 2:00 P.M. Carl Mur, Esq., and Kalow & Bass, C.P.A.'s by Henry Bass, C.P.A. appeared for petitioner. Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel) appeared for the Income Tax Bureau.

ISSUES

I. Did petitioner, Leonard Pochter's, selling activities during the years 1962, 1963, 1964 and 1965 constitute the carrying on of an unincorporated business?

II. Did petitioner, Leonard Pochter, have reasonable cause for failing to file unincorporated business tax returns for the years 1962, 1963, 1964 and 1965?

FINDINGS OF FACT

1. Petitioner, Leonard Pochter, and his wife filed New York State income tax resident returns for the years 1962 and 1963 and New York State combined income tax returns for the years 1964 and 1965. He did not file New York State unincorporated business tax returns for said years.

2. On November 27, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Leonard Pochter, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1962, 1963, 1964 and 1965. It also made an \$800.00 adjustment to reflect federal audit changes for the year 1962, which adjustment is not being contested by petitioner. It further imposed a penalty of \$1,295.71 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$7,378.54.

3. During the years 1962, 1963, 1964 and 1965 petitioner, Leonard Pochter, was a women's dress, coat, and suit salesman. He represented three firms in the sale of said items. Two of the firms were affiliated. The items sold by him for each firm were noncompetitive. He had no office or employees. He was not allowed to carry lines for other firms.

4. During the years 1962, 1963, 1964 and 1965 the firms for whom he sold merchandise paid him on a commission basis. He received a draw against commissions. Federal and New York State income taxes, social security tax and disability insurance premiums were withheld from the draws paid to him, but not on the commissions in excess of the draws. He was not reimbursed for any of his expenses. On his federal income tax returns he annexed schedules wherein he set forth his gross receipts less business expenses. He was not a member of the firms pension plans. He spent sixteen weeks a year on the road selling the firms products. Ninety-five percent of his customers purchased the products of all three firms. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his sales activities or techniques while on the

road, except to limit the territory in which he could sell. When he was not on the road selling, he worked in the New York showrooms of the firms he represented. He spent the mornings in the showrooms of one firm and the afternoons in the showrooms of the two affiliated firms. While in the showrooms he made appointments and telephone calls and sent out letters in connection with his out of town sales activities. While in the showrooms he also was required to wait on house customers and customers of other salesmen. He also made out cutting tickets and invoices and helped ship orders. He did not receive any commissions or specific compensation in connection with these activities.

5. Petitioner, Leonard Pochter, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1962, 1963, 1964 and 1965.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Leonard Pochter, from the firms he represented during the years 1962, 1963, 1964 and 1965 constituted income from his regular business of selling women's dresses, coats and suits 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, Leonard Pochter, during the years 1962, 1963, 1964 and 1965 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 petitioner, Leonard Pochter, had reasonable cause for not filing unincorporated business tax returns for the years 1962, 1963, 1964 and 1965, and, therefore, the penalty assessed pursuant

to section 685(a) of the Tax Law is waived.

D. That the petition of Leonard Pochter is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1962, 1963, 1964 and 1965 in the total sum of \$1,295.71 and the Notice of Deficiency issued November 27, 1967, is reduced from \$7,378.54 to \$6,082.83 together with such interest as may be due from November 27, 1967, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

*March 2, 1972.*

STATE TAX COMMISSION

*Thomas Gallivan*  
COMMISSIONER

*Bruce Manley*  
COMMISSIONER

*Milton Gerner*  
COMMISSIONER