

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

DAVID PRICE

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

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) 1961, 1962, 1963
1964 & 1965

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 4th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon David Price
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid

wrapper addressed as follows: David Price
95 Mimosa Drive
Roslyn, New York 11576

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

4th day of April, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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Taxes under Article(s) 23 of the
Tax Law for the (Year(s) 1961, 1962, 1963
1964 & 1965

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 4th day of April, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Jerome Reiss, Esq.

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

wrapper addressed as follows: Jerome Reiss, Esq.
100 Church 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

4th day of April, 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

April 4, 1972

**David Price
95 Mimosa Drive
Roslyn, New York 11576**

Dear Sir:

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,

Paul B. Coburn
HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :

of :

DAVID PRICE :

DECISION

for Redetermination of Deficiency or
for Refund of Unincorporated Business
Tax under Article 23 of the Tax Law
for the Years 1961, 1962, 1963, 1964
and 1965. :

:

Petitioner, David Price, 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 1961, 1962, 1963, 1964 and 1965. (File No. 46049911). 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 June 17, 1971, at 9:10 A.M. and continued on November 16, 1971, at 1:15 P.M. Petitioner appeared by Greenberg, Trayman, Harris, Cantor, Reiss & Blasky, Esqs. (Jerome Reiss, Esq., of Counsel). The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did petitioner, David Price's activities as a furniture salesman during the years 1961, 1962, 1963, 1964 and 1965 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, David Price, and his wife filed New York State income tax resident returns for the years 1961, 1962, 1963, 1964 and 1965. He did not file New York State unincorporated business tax returns for said years.

2. On March 11, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, David Price, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the years 1961, 1962, 1963, 1964 and 1965. It also increased his net profit for the years 1961 and 1962 in accordance with a federal audit disclosing additional business income. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$9,152.43.

3. Petitioner, David Price, was a furniture salesman during the years 1961, 1962, 1963, 1964 and 1965. He represented four or five firms in the sale of furniture. The items sold for each firm were noncompetitive. He generally sold the products of the different firms to the same customers. One of the firms, Thayer Coggin, Inc., provided 60% to 80% of his commission income. He did not have any employees. He used one room in his home as an office.

4. During the years 1961, 1962, 1963, 1964 and 1965, the firms for whom petitioner, David Price, sold furniture did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. They did not reimburse him for any of his business expenses. He deducted expenses incurred in connection with his sales activities on Schedule "C" of his federal income tax returns. He reported his commission income as "business income" on his New York State resident income tax returns. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, David Price, obtained a B.A. degree. He took graduate courses at the New York University School of Retailing. He worked as an assistant buyer for a major New York City department store and as a buyer and merchandise manager for City Stores Corporation prior to representing the aforesaid firms in the sale of furniture.

6. Petitioner, David Price, failed to submit any documentary or other substantial evidence to prove that federal adjustments disclosing additional business income in the sums of \$1,616.16 for the year 1961 and \$1,700.00 for the year 1962 were improperly assessed.

7. At the formal hearing held on June 17, 1971, petitioner, David Price's representative requested that the State Tax Commission cut off the accrual of interest on the alleged unincorporated business tax liability as of said date.

CONCLUSIONS OF LAW

A. That the income received by petitioner, David Price, from the firms he represented during the years 1961, 1962, 1963, 1964 and 1965 constituted income from his regular business of selling furniture 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 activities of petitioner, David Price, as a furniture salesman during the years 1961, 1962, 1963, 1964 and 1965, although requiring special knowledge and experience, did not constitute the practice of a profession exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(c) of the Tax Law.

C. That the aforesaid activities of petitioner, David Price, during the years 1961, 1962, 1963, 1964 and 1965, 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.

D. That the Statement of Audit Changes properly assessed additional business income for the years 1961 and 1962 based upon a federal audit of petitioner, David Price's federal income tax returns.

E. That the State Tax Commission does not have the authority under Article 23 of the Tax Law to waive the accruing of interest on petitioner, David Price's unincorporated business tax liability for the years 1961, 1962, 1963, 1964 and 1965.

F. That the petition of David Price is denied and the Notice of Deficiency issued March 11, 1968, is sustained.

DATED: Albany, New York
April 4, 1973

STATE TAX COMMISSION

Norman Galtman

COMMISSIONER

Richard Marley

COMMISSIONER

Milton Krum

COMMISSIONER