

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

LOUIS RIEZMAN

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) 1966

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 19th day of September, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon LOUIS RIEZMAN

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

wrapper addressed as follows: Mr. Louis Riezman
2104 Oliver Way
Merrick, New York 11566

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 September, 1972

Martha Furass

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
September 19, 1972

Mr. Louis Riezman
2104 Oliver Way
Merrick, New York 11566

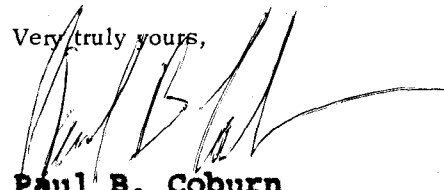
Dear Mr. Riezman:

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	:	
LOUIS RIEZMAN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1966.	:	

Petitioner, Louis Riezman, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the year 1966. (File No. 54375288). 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 July 11, 1972, at 10:00 A.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Albert J. Rossi, Esq., of Counsel).

ISSUE

I. Did the selling activities of petitioner, Louis Riezman, during the year 1966 constitute the carrying on of an unincorporated business?

II. Did petitioner, Louis Riezman, have reasonable cause for failing to file a New York State unincorporated business tax return for the year 1966?

FINDINGS OF FACT

1. Petitioner, Louis Riezman, and his wife filed a New York State income tax resident return for the year 1966. He did not file a New York State unincorporated business tax return for said year.

2. On May 26, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Louis Riezman, imposing unincorporated business tax in the sum of \$418.24 upon the income received by him from his activities as a salesman during the year 1966. It also imposed a penalty in the sum of \$104.56 for failure to file a New York State unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$575.83.

3. Petitioner, Louis Riezman, was a children's sportswear salesman during the year 1966. He sold children's sportswear for Bambury Fashions, Inc. and All Time Togs, Inc. The firms for whom he sold merchandise were not affiliated. The items sold by him for each firm were noncompetitive. He sold their products to the same customers. He did not maintain an office or an inventory. He did not employ any salesman or clerical assistants.

4. Petitioner, Louis Riezman, earned gross commissions totaling \$29,263.00 during the year 1966 from Bambury Fashions, Inc. He received a draw of \$24,209.00 against said commissions. Federal and New York State income taxes and social security tax were withheld from the drawing account payments, but not from the balance of the commissions. Bambury Fashions, Inc. covered him for workmen's compensation, unemployment and disability insurance. He was not reimbursed for his expenses. He submitted an itinerary of his road trips to a vice president of the company for approval. The company allowed him to carry one sideline, not to exceed one sample case, to be exhibited only after showing the Bambury line. He could exhibit the sideline only when he was on the road. His

territory was limited to the southeastern United States. He was required to be in the company showroom from 9:00 to 5:30 P.M. daily when he was not on the road. He waited on customers when he was in the showroom. He was required to wait on all customers, although he only received commissions on sales made to customers in his own territory. The company did not exercise any substantial direction and control over his sales activities and techniques or over the time he devoted to sales, except as heretofore stated.

5. Petitioner, Louis Riezman, earned gross commissions totaling \$3,151.00 during the year 1966 from All Time Togs, Inc. It did not withhold Federal and New York State income taxes or social security tax from the commissions paid to him. It did not cover him for workmen's compensation, disability or unemployment insurance. It did not reimburse him for his expenses. It did not exercise any substantial direction or control over his sales activities and techniques or over the time he devoted to sales.

6. Petitioner, Louis Riezman, received \$900.00 from Marcie Dale, Inc. during the year 1966. This represented commissions on sales made during the year 1965 for said company.

7. Petitioner, Louis Riezman, was advised by his accountant that he was not required to file a New York State unincorporated business tax return for the year 1966.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Louis Riezman, from the firms that he represented during the year 1966 constituted income from his regular business of selling children's sportswear

and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of sections 703(b) and 703(f) of the Tax Law.


B. That the aforesaid activities of petitioner, Louis Riezman, during the year 1966 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.

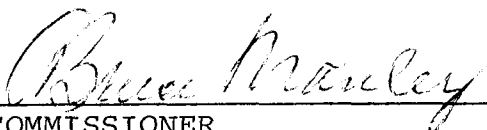
C. That petitioner, Louis Riezman, had reasonable cause for not filing a New York State unincorporated business tax return for the year 1966, and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

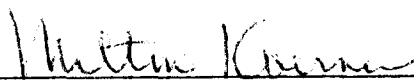
D. That the petition of Louis Riezman is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the year 1966 in the sum of \$104.56; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued May 26, 1969; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
September 19, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER