

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD ROSENTHAL

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) 1960 - 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 24 day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon BERNARD

ROSENTHAL (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows:

Bernard Rosenthal
82 - 40 242nd Street
Bellerose, 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

24 day of August , 1972

James S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 24 day of August , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon ALVIN I.

GOIDEL (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Alvin I. Goidel
Goidel & Goidel
127 John 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

24 day of August , 1972.

James S. Klein Patterson

Martha Funaro



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
August 24, 1972

Mr. Bernard Rosenthal
82-40 242nd Street
Bellerose, New York

Dear Mr. Rosenthal:

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 **four 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

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Tax Law for the (Year(s) 1960 - 1962:

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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 1st day of September, 1972, she served the within
Notice of Decision (or Determination) by (certified) mail upon Alvin I. Goidel

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

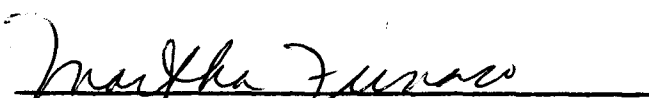
wrapper addressed as follows: Alvin I. Goidel
Goidel & Goidel
127 John Street
New York, New York

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

1st day of September, 1972.



STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
BERNARD ROSENTHAL	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Years 1960, 1961 and 1962.	:	

Petitioner, Bernard Rosenthal, has filed a petition for redetermination of a deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1960, 1961 and 1962. (File No. 2-3323754). 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 20, 1972, at 11:00 A.M. Petitioner appeared by Goidel & Goidel, Esqs. (Alvin I. Goidel, Esq., of Counsel). The Income Tax Bureau appeared by Saul Heckelman, Esq. (Albert J. Rossi, Esq., of Counsel).

ISSUE

Did the selling activities of petitioner, Bernard Rosenthal, during the years 1960, 1961 and 1962 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Bernard Rosenthal, and his wife filed New York State income tax resident returns for the years 1960, 1961 and 1962. He did not file New York State unincorporated business tax returns for said years.

2. On February 14, 1966, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Bernard Rosenthal, imposing unincorporated business tax in the total sum of \$1,045.88 upon the income received by him from his activities as a salesman during the years 1960, 1961 and 1962. It also made an adjustment to conform with a federal audit for the year 1962. The amount of said adjustment is not being contested by him. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,270.10.

3. Petitioner, Bernard Rosenthal, was a furniture parts salesman during the years 1960, 1961 and 1962. He sold furniture parts for three firms in 1960 and for two firms in 1961 and 1962. 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 generally the same customers. He maintained an office in his home. He paid commissions to a cousin who aided him in making sales in the Boston area.

4. The firms for whom petitioner, Bernard Rosenthal, sold merchandise during the years 1960, 1961 and 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 workmen's compensation, unemployment or medical insurance. He was not reimbursed for his expenses, with the exception of certain trade show expenses. He deducted his business expenses on Schedule "C" of his federal income tax return. 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.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Bernard Rosenthal, from the firms that he represented during the years 1960, 1961 and 1962 constituted income from his regular business of selling furniture parts 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.

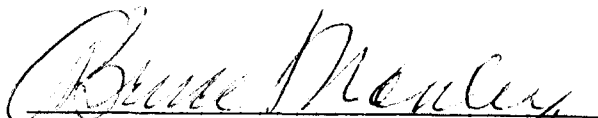
B. That the aforesaid activities of petitioner, Bernard Rosenthal, during the years 1960, 1961 and 1962 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

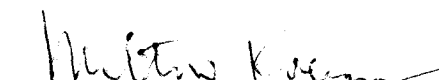
C. That the petition of Bernard Rosenthal is denied and the Notice of Deficiency issued February 12, 1966, is sustained.

DATED: Albany, New York
August 24, 1972

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER