

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition

of

OSCAR SCHECHNER

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

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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 4th day of April, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Oscar Schechner

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Oscar Schechner  
506 Queen Street  
Westbury, 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

Karl Zimmerman

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

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of

OSCAR SCHECHNER

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OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

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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 4th day of April, 1972, she served the within  
Notice of Decision (or Determination) by (certified) mail upon Benjamin Rashkin

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

wrapper addressed as follows: Benjamin Rashkin  
1450 Broadway  
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

Ray Zimmerman

Martha Funaro



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12226

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

HEARING UNIT

EDWARD ROOK

SECRETARY TO  
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

**Dated:** Albany, New York

**April 4, 1972**

**Oscar Schechner  
506 Queen Street  
Westbury, New York**

**Dear Mr. Schechner:**

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

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In the Matter of the Petition	:	
of	:	
OSCAR SCHECHNER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1965.	:	

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Petitioner, Oscar Schechner, 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 1965. (File No. 46227867). A formal hearing was to be held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York. Petitioner's representative, Benjamin Rashkin, C.P.A., advised the State Tax Commission in writing on October 5, 1971, that petitioner wished to waive a formal hearing and submit the case to the State Tax Commission on the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUES

I. Did the selling activities of petitioner, Oscar Schechner, during the year 1965 constitute the carrying on of an unincorporated business?

II. Did petitioner, Oscar Schechner, have reasonable cause for failing to file New York State unincorporated business tax return for the year 1965?

FINDINGS OF FACT

1. Petitioner, Oscar Schechner, and his wife filed a New York State income tax resident return for the year 1965. He did not file a New York State unincorporated business tax return for said year.

2. On January 29, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Oscar Schechner, imposing unincorporated business tax upon the income received by him as a salesman during the year 1965. It also imposed a penalty of \$166.27 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 \$902.72.

3. Petitioner, Oscar Schechner, was a children's wear salesman during the year 1965. He represented two firms in the sale of children's wear. The items sold by him for each firm were non-competitive.

4. Only one of the firms for whom petitioner, Oscar Schechner, sold merchandise during the year 1965 withheld Federal and New York State income taxes and social security tax from the commissions paid to him. He received approximately two-thirds of his commission income from said firm. He was not reimbursed for any of his business expenses. He deducted these business expenses on his federal income tax return. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his sales activities or techniques or to the time he devoted to sales, except to limit the

territory in which he could sell.

5. Petitioner, Oscar Schechner, was advised by his accountant that he was not required to file a New York State unincorporated business tax return for the year 1965.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Oscar Schechner, from the two firms he represented during the year 1965 constituted income from his regular business of selling children's wear 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 aforesaid activities of petitioner, Oscar Schechner, during the year 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.

C. That petitioner, Oscar Schechner, had reasonable cause for failing to file a New York State unincorporated business tax return for the year 1965, and, therefore the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of Oscar Schechner is granted to the extent of cancelling the penalty imposed for the year 1965 pursuant to section 685(a) of the Tax Law and the Notice of Deficiency issued January 29, 1968, is reduced from \$902.72 to \$736.45 together with such interest as may be due from January 29, 1968, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
*April 4, 1972*

STATE TAX COMMISSION

*Norman Bellman*  
\_\_\_\_\_  
COMMISSIONER

*Charles Stanley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Kane*  
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COMMISSIONER