

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
JOSEPH SKLAR

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

Rae Zimmerman , 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 5th day of April , 19 72 she served the within
Notice of Decision (or Determination) by (certified) mail upon

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

Joseph Sklar
857 Dogwood Avenue
West Hempstead, N.Y. 11552

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

5th day of April , 1972.

Martha Funnaro

Rae Zimmerman

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 5th day of April , 1972 , she served the within
Notice of Decision (or Determination) by (certified) mail upon Irving L. Baumwald, Esq.

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
Irving L. Baumwald, Esq.
wrapper addressed as follows: Stern, Porter, Kingston & Coleman
500 Fifth Avenue
New York, N.Y. 10030

and by depositing same enclosed in a postpaid properly addressed wrapper in a
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the United States Post Office Department within the State of New York.

That deponent further says that the said addressee is the (representative
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Sworn to before me this

5th day of April , 1972

Martha F. Lerner

Rae Zimmerman



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
April 5, 1972

Joseph Sklar
857 Dogwood Avenue
West Hempstead, N.Y. 11552

Dear Mr. Sklar:

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

In the Matter of the Petition	:	
of	:	
JOSEPH SKLAR	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1966.	:	

Petitioner, Joseph Sklar, 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. 56168528). 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 October 21, 1971, at twelve o'clock noon. Petitioner appeared by Stern, Porter, Kingston & Coleman, Esqs. (Irving L. Baumwald, Esq., of Counsel). The Income Tax Bureau appeared by Edward H. Best, Esq., (Albert J. Rossi, Esq., of Counsel).

ISSUES

I. Did petitioner, Joseph Sklar's, selling activities during the year 1966 constitute the carrying on of an unincorporated business?

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

FINDINGS OF FACT

1. Petitioner, Joseph Sklar, 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 October 28, 1968, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Joseph Sklar, imposing unincorporated business tax upon the income received by him from his activities as a salesman during the year 1966. It also imposed a penalty of \$44.14 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 \$236.98.

3. During the year 1966, petitioner, Joseph Sklar, was a costume jewelry and watch salesman. He represented four unaffiliated firms in the sale of these items. The products sold by him for each firm were noncompetitive. He sold the products generally to the same customers.

4. During the year 1966, only one of the four firms for whom he sold merchandise withheld Federal and New York State income taxes and social security tax from the commissions paid to him. Sales for this firm provided approximately 70% of his gross commission income. He was not reimbursed for any of his business expenses. He deducted these business expenses from his gross commission income on 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.

5. Petitioner, Joseph Sklar, 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, Joseph Sklar, from the firms he represented during the year 1966, constituted income from his regular business of selling costume jewelry and

watches and not income 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, Joseph Sklar, 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, Joseph Sklar, 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 Joseph Sklar is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the year 1966 and the Notice of Deficiency issued October 28, 1968, is reduced from \$236.98 to \$192.84 together with such interest as may be due from October 28, 1968, and, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

April 3, 1972

STATE TAX COMMISSION

Norman Gallman

COMMISSIONER

Bruce Hanley

COMMISSIONER

Milton Korman

COMMISSIONER