

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of
CARL R. STERN

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

For a Redetermination of a Deficiency or
a Refund of Unincorporated Business & Personal Income
Taxes under Article(s) 23 & 22 of the
Tax Law for the (Year(s) 1965, 1966 & 1967

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 19th day of July , 19 72, she served the within
Notice of Decision (or Determination) by (certified) mail upon Carl R. Stern

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

19 Rolling Drive
Brookville, New York 11545

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 July , 1972

Kal J. Jernigan

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

July 19, 1972

Carl R. Stern
19 Rolling Drive
Brookville, New York 11545

Dear Mr. Stern:

Please take notice of the **DECISION**
of the State Tax Commission enclosed herewith.

Please take further notice that pursuant to
Section(s) **722 & 689** of the Tax Law, any
proceeding in court to review an adverse deci-
sion must be commenced within **4 Months**
from 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 relative
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

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CARL STERN	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1965, 1966 and 1967.	:	

Petitioner, Carl Stern, 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 1965, 1966 and 1967. (File No. 74503118). 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 February 17, 1972, at 2:30 P.M. Petitioner appeared pro se. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Alexander Weiss, Esq., of Couhsel).

ISSUES

I. Did petitioner, Carl Stern's selling activities during the years 1965, 1966 and 1967, constitute the carrying on of an unincorporated business?

II. Did petitioner, Carl Stern, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1965, 1966 and 1967?

FINDINGS OF FACT

1. Petitioner, Carl Stern, and his wife filed New York State income tax resident returns for the years 1965, 1966 and 1967. He did not file New York State unincorporated business tax returns for said years.

2. On March 17, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Carl Stern, imposing

unincorporated business tax in the sum of \$2,740.06 upon the income received by him from his activities as a salesman during the years 1965, 1966 and 1967. It also imposed a penalty pursuant to section 685(a) of the Tax Law in the sum of \$685.00 for failure to file unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$3,703.94.

3. Petitioner, Carl Stern, was a women's shoe salesman during the years 1965, 1966 and 1967. He represented two unaffiliated firms in the sale of women's shoes. The products sold by him for each firm were noncompetitive. He sold their products to substantially the same customers.

4. The firms for whom petitioner, Carl Stern, sold women's shoes during the years 1965, 1966 and 1967, did not withhold Federal and New York State income taxes and social security tax from the commissions paid to him. He received a draw against commissions. He was not reimbursed for expenses, other than certain expenses incurred in connection with trade shows. He deducted his business expenses on Schedule "C" of his federal income tax returns. He maintained a self-employed retirement plan with John Hancock Mutual Life Insurance Company and took appropriate self-employed retirement deductions on his federal income tax returns. The firms for whom he sold merchandise did not exercise any substantial direction or control 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, Carl Stern, was advised by his accountant that he was not required to file unincorporated business tax returns for the years 1965, 1966 and 1967.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Carl Stern, from the two firms that he represented during the years 1965, 1966 and 1967 constituted income from his regular business of selling women's shoes 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, Carl Stern, during the years 1965, 1966 and 1967 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, Carl Stern, had reasonable cause for not filing unincorporated business tax returns for the years 1965, 1966 and 1967, and therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of Carl Stern is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1965, 1966 and 1967 in the sum of \$685.00; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued March 17, 1969; and that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York

July 19, 1972

STATE TAX COMMISSION

Norman Gallone
COMMISSIONER

Bruce Hanley
COMMISSIONER

Milton Krumer
COMMISSIONER