

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ISRAEL WALD

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)) 1963 - 1965

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

WALD (representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Israel Wald  
302 West 12th 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

24th day of August, 1972.

Lynn Wilson

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ISRAEL WALD

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) 1963 - 1965 :

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State of New York  
County of Albany

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she is an employee of the Department of Taxation and Finance, over 18 years of  
age, and that on the 24th day of August , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon EMANUEL FISHMAN

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

wrapper addressed as follows: Mr. Emanuel Fishman  
341 Madison Avenue  
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

24th day of August , 1972.

Lynn Wilson

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. Israel Wald**  
**302 West 12th Street**  
**New York, New York**

**Dear Mr. Wald:**

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	:	
ISRAEL WALD	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1963, 1964 and 1965.	:	

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Petitioner, Israel Wald, 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 1963, 1964 and 1965. (File No. 48060569). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York on July 13, 1972 at 10:45 A.M. On said date, petitioner waived a formal hearing and consented to the issuance of a decision based upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUES

I. Did petitioner, Israel Wald's activities as a fur buyer and a fur broker during the years 1963, 1964 and 1965 constitute the carrying on of an unincorporated business?

II. Did petitioner, Israel Wald, have reasonable cause for failing to file New York State unincorporated business tax returns for the years 1963, 1964 and 1965?

FINDINGS OF FACT

1. Petitioner, Israel Wald, and his wife filed New York State combined income tax returns for the years 1963, 1964 and 1965. He did not file New York State unincorporated business tax returns for said years. He stated his occupation as "fur broker" on said returns.

2. On August 21, 1967, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Israel Wald, imposing unincorporated business tax in the sum of \$543.74 upon the income received by him from his business activities as a fur broker during the years 1963, 1964 and 1965. It also imposed a penalty in the sum of \$135.94 for failure to file New York State unincorporated business tax returns for said years. It further imposed additional personal income tax in the sum of \$359.49 for the years 1963 and 1964 as per a federal audit for said years. The federal audit changes are not being contested by him. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$1,186.48.

3. Petitioner, Israel Wald, was an assistant fur buyer for Birken Brothers, Inc. during the years 1963, 1964 and 1965. When the corporation required mink skins for the production of garments it would direct him to go into the fur market and purchase the necessary skins. He would purchase the skins from various suppliers in the fur market. The suppliers would bill Birken Brothers, Inc. directly for the cost of the skins. He was paid a commission of 1/2% of the invoiced cost by the suppliers. He did not receive any compensation from Birken Brothers, Inc.

4. Federal and New York State income taxes and social security tax were not withheld from the commissions received by him as a fur buyer during the years 1963, 1964 and 1965. He was not covered for workmen's compensation insurance. He was not reimbursed for his business expenses. Birken Brothers, Inc. did not exercise any substantial direction and control over his sales activities and techniques or over the time he devoted to sales.

5. Petitioner, Israel Wald was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1963, 1964 and 1965.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Israel Wald, from various suppliers of skins in the fur market during the years 1963, 1964 and 1965 constituted income from his regular business as a fur buyer or fur broker 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, Israel Wald, during the years 1963, 1964 and 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, Israel Wald, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1963, 1964 and 1965 and, therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

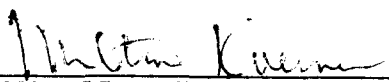
D. That the petition of Israel Wald is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1963, 1964 and 1965 in the sum of \$135.94; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued August 21, 1967; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
August 24, 1972

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER