

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

MILTON WEINSTEIN

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, 1966 :  
and 1967.

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

State of New York  
County of Albany

Lynn Wilson , 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 26th day of July , 1972, she served the within Notice of Decision (or Determination) by (certified) mail upon MILTON WEINSTEIN (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Milton Weinstein  
Apt. 5F  
115 East 21st Street  
Brooklyn, New York 11226  
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

26th day of July , 1972.

Northa Funnas

Lynn Wilson

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

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State of New York  
County of Albany

Lynn Wilson , 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 26th day of July , 19 72, she served the within  
Notice of Decision (or Determination) by (certified) mail upon EDWARD SILLS, ESQ.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Edward Sills, Esq.  
30 Broad Street  
New York, New York 10004

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

26th day of July , 1972

Maatha J. Jones

Lynn Wilson



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

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

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
**July 26, 1972**

Mr. Milton Weinstein  
Apt. 5F  
115 East 21st Street  
Brooklyn, New York 11226

Dear Mr. Weinstein:

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

Please take further notice that pursuant to section(s)  
**23** 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,

**Nigel G. Wright**

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 :  
MILTON WEINSTEIN : DECISION  
for a Redetermination of a Deficiency :  
or for Refund of Unincorporated Business :  
Taxes under Article 23 of the Tax Law :  
for the years 1965, 1966 and 1967. :

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Milton Weinstein filed a petition for a redetermination of a deficiency issued under date of July 27, 1970, in unincorporated business taxes under Article 23 of the Tax Law for the years 1965, 1966 and 1967.

A hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York City, on March 6, 1972, before Nigel G. Wright, Hearing Officer. The petitioner was represented by Edward M. Sills, Esq. The Income Tax Bureau was represented by Saul Heckelman, Esq., appearing by Francis X. Boylan, Esq.

ISSUE

The issue in this case is whether the petitioner, a salesman, is subject to unincorporated business tax.

FINDINGS OF FACT

1. Petitioner worked primarily for Diane Studios, Inc. of Brooklyn, New York, typically receiving over 60% of his commissions from them. Another 6% of his commissions came from Artemis Studios, Inc. of the same address. Artemis Studios, Inc. is controlled by the same interests. He sold lampshades for them. He also sold lampshades for two other firms as a sideline and made accommodation sales or referrals for several others.

2. Petitioner covered a territory of Metropolitan New York City including Long Island, Westchester and a large part of New Jersey. This territory was exclusive. He was not reimbursed for expenses.

3. No principal withheld any amount from petitioner's compensation nor covered him for typical employee benefits. Petitioner paid his own federal self-employment tax.

4. Petitioner had to attend trade shows. Any commissions earned there were paid to the salesman for the territory in which the customer was located. Petitioner reported market conditions and styles to his principals. He solicited orders only on the letterheads of his principals and at prices fixed by them.

5. The deficiency amounts to \$979.69 plus interest of \$189.27 for a total of \$1,168.96.

CONCLUSIONS OF LAW

Petitioner has not carried the burden of proof that his principals exercised sufficient direction and control to constitute him an employee. He is subject to unincorporated business tax.

DECISION

The petition is denied. The deficiency is correct and is due together with such additional interest as may be due under section 684 of the Tax Law.

DATED: Albany, New York

*July 26, 1972.*

STATE TAX COMMISSION

*Norman Gelboim*  
\_\_\_\_\_  
COMMISSIONER

*Bruce Manley*  
\_\_\_\_\_  
COMMISSIONER

*Milton Koeman*  
\_\_\_\_\_  
COMMISSIONER