

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

GEORGE JACOBS (Deceased)

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

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 1st day of October , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Lina Jacobs

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

wrapper addressed as follows: Mrs. Lina Jacobs
11 Stetner Street
Spring Valley, New York 10977

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

1st day of October , 1973.

James S. Van Patten

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE
BUILDING 9, ROOM 214A
STATE CAMPUS
ALBANY, N. Y. 12226

STATE TAX COMMISSION
Mario A. Procaccino,
~~XXXXXXXXXXXX~~ PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

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

October 1, 1973

Mrs. Lina Jacobs
11 Stetner Street
Spring Valley, New York 10977

Dear Mrs. Jacobs:

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 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

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|---------------------------------------|---|----------|
| In the Matter of the Petition | : | |
| of | : | |
| GEORGE JACOBS (Deceased) | : | DECISION |
| for Redetermination of Deficiency or | : | |
| for Refund of Unincorporated Business | : | |
| Tax under Article 23 of the Tax Law | : | |
| for the Year 1965. | : | |

Petitioner, George Jacobs (deceased), 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. 46240549). 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 July 17, 1973, at 2:45 P.M. Petitioner appeared by his administratrix, Lina Jacobs. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUES

I. Did petitioner, George Jacobs' (deceased) activities as a lingerie salesman during the year 1965 constitute the carrying on of an unincorporated business?

II. Did petitioner, George Jacobs (deceased), have reasonable cause for failing to file a New York State unincorporated business tax return for the year 1965?

FINDINGS OF FACT

1. Petitioner, George Jacobs (deceased), 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, George Jacobs (deceased), imposing unincorporated business tax in the sum of \$99.22 upon the income received

by him from his activities as a salesman during the year 1965. It also imposed a penalty in the sum of \$24.80 for failure to file a New York State unincorporated business tax return for said year.

3. During the year 1965, petitioner, George Jacobs (deceased), was a lingerie salesman. He represented five firms in the sale of said items. Two of the firms were affiliated. The products sold by him for each firm were noncompetitive. He sold their products to the same customers. He did not have an office or any employees.

4. During the year 1965, the firms for whom petitioner, George Jacobs (deceased), sold merchandise did not withhold Federal or New York State income taxes from the commissions paid to him. Two of the firms did withhold social security tax from said commissions. He was not reimbursed for his expenses. The firms for whom he sold merchandise did not exercise any substantial direction 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, George Jacobs (deceased), was advised by the attorney for the National Council of Salesmen's Organizations 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, George Jacobs (deceased), from the firms that he represented during the year 1965, constituted income from his regular business of selling lingerie 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, George Jacobs (deceased), 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, George Jacobs (deceased), 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 George Jacobs (deceased), is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the year 1965 in the sum of \$24.80; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued January 29, 1968; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
October 1, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER