

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

OSCAR MANKET

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) 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 24th day of July , 1973 , she served the within
Notice of Decision (or Determination) by (certified) mail upon OSCAR MANKET

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

wrapper addressed as follows: Mr. Oscar Manket
57 Fallon Avenue
Elmont, New York 11003

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 July , 1973.

Martha J. Juncos

Lynn Wilson

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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OSCAR MANKET

For a Redetermination of a Deficiency or
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Tax Law for the (Year(s) 1967.

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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 24th day of July, 1973, she served the within
Notice of Decision (or Determination) by (certified) mail upon HARRY BRAUN,
ESQ. (representative of) the petitioner in the within

proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Harry Braun, Esq.
360 Lexington Avenue
New York, New York 10018

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 July, 1973.

Jantha Sunaro

Lynn Wilson



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, ~~XXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
July 24, 1973

Mr. Oscar Manket
57 Fallon Avenue
Elmont, New York 11003

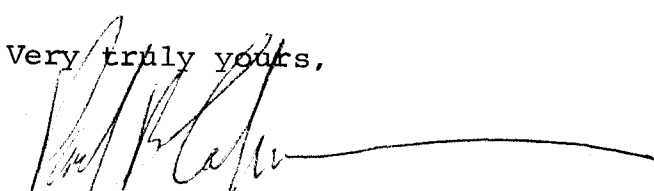
Dear Mr. Manket:

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

In the Matter of the Petition	:	
of	:	
OSCAR MANKET	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1967.	:	

Petitioner, Oscar Manket, 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 1967. (File No. 78660130). 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 May 25, 1973, at 9:00 A.M. Petitioner appeared by Harry Braun, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (James Scott, Esq., of Counsel).

ISSUE

Did petitioner, Oscar Manket's selling activities during the year 1967 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Oscar Manket, and his wife filed a New York State combined income tax return for the year 1967. He did not file a New York State unincorporated business tax return for said year.

2. On February 22, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Oscar Manket, imposing unincorporated business tax in the sum of \$1,493.43 upon the income received by him from his activities as a jewelry salesman during the year 1967. It also imposed additional personal income tax for said year in the sum of \$366.85 as a result of a Federal audit. It accordingly issued a Notice of Deficiency in the sum of \$2,178.67.

3. Petitioner, Oscar Manket, did not contest the imposition of additional personal income tax for the year 1967. On April 2, 1973, he remitted to the Income Tax Bureau the sum of \$476.81 which represented payment of the additional personal income tax for said year plus accrued interest on said tax.

4. During the year 1967, petitioner, Oscar Manket, was a jewelry salesman. He represented three firms in the sale of said items. The products sold by him for each firm were noncompetitive. He did not have an office or any employees.

5. During the year 1967, the firms for whom petitioner, Oscar Manket, sold merchandise withheld Federal and New York State income taxes and social security tax from the commissions paid to him. They covered him for workmen's compensation and unemployment insurance. He was not reimbursed for any of his business expenses. These expenses amounted to approximately one-third of his commission income. He deducted his business expenses from his gross commissions 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.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Oscar Manket, from the firms he represented during the year 1967 constituted income from his regular business of selling jewelry 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, Oscar Manket, during the year 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.

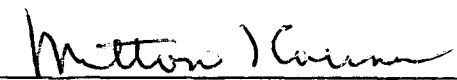
C. That the petition of Oscar Manket is denied and the Notice of Deficiency issued February 22, 1971, is sustained. Petitioner shall receive credit against said Notice of Deficiency for the payment made by him on April 2, 1973.

DATED: Albany, New York
July 24, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER