

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EARL S. WINTER, JR.

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

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) 1960, 1961, 1962,
1963 & 1964

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 5th day of March , 19 73, she served the within
Notice of Decision (or Determination) by (certified) mail upon Earl S. Winter, Jr.

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

wrapper addressed as follows: Earl S. Winter, Jr.
300 Le Brun Road
Egbertsville, 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

5th day of March , 1973.

Lynn M. [Signature]

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

EARL S. WINTER, JR.

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

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) 1960, 1961, 1962,
1963 & 1964

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 5th day of March , 1973 , she served the within Notice of Decision (or Determination) by (certified) mail upon Peter P. Poth (representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Peter P. Poth
Peat, Marwick, Mitchell & Co.
1515 Liberty Bank Building
Buffalo, New York 14202
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

5th day of March , 1973.

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
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

NORMAN F. GALLMAN, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

March 5, 1973

Earl S. Winter, Jr.
300 Le Brun Road
Bygertsville, New York

Dear Mr. Winter:

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,

L. Robert Leisner

HEARING OFFICER

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

EARL S. WINTER, JR.

For a Redetermination of a Deficiency
or for Refund of Unincorporated Business
Taxes under Article 23 of the Tax Law
for the years 1960, 1961, 1962, 1963 and
1964.

DECISION

Earl S. Winter, Jr. petitioned for a redetermination of a deficiency of unincorporated business taxes under Article 23 of the Tax Law for the years 1960 through 1964.

A formal hearing was held at the State Tax Commission offices in the State Office Building, Niagara Square, Buffalo, New York on September 18, 1970, before L. Robert Leisner, Hearing Officer.

The taxpayer, who was present, was represented by Peter P. Poth, C.P.A. and the Income Tax Bureau was represented by Edward H. Best, Esq. (Alexander Weiss, Esq. of Counsel).

FINDINGS OF FACT

1. Notices of Deficiency for the taxable years 1960 and 1961, were issued on July 12, 1965 under File No. 1-3571701 and for the years 1962, 1963 and 1964 on September 26, 1966, under File No. 26003276.

2. Petitioner timely filed petitions for redetermination of the deficiencies.

3. The Income Tax Bureau contended that the petitioner operated an unincorporated business. The petitioner contended that he was merely an outside salesman, an employee.

4. Petitioner's expenses were paid by Temple Stuart Co. when petitioner was summoned to the factory or when he attended sales meetings. Sales meetings were held once or twice a year.

The company trained its sales representatives. The Temple Stuart Furniture line was petitioner's dominant source of income, although petitioner generally represented two noncompeting, subordinate furniture lines with the consent of Temple Stuart.

5. There were no paid vacations. There was group insurance for petitioner. For tax withholding purposes, the petitioner was treated by his employers as self-employed and the petitioner himself reported his earnings as a self-employed person.

6. The petitioner worked out of his home, and had a desk, filing cabinet and a small amount of miscellaneous office equipment in one bedroom. The petitioner filed a business Schedule "C" with his Federal income tax return, deducting various business expenses.

7. For the years in issue, Temple Stuart Co. was the source of about 60% of petitioner's income. In 1963, for example, the petitioner received the following income:

Temple Stuart	\$39,000.00
Coloney House	20,000.00
Other	<u>4,000.00</u>
Total	\$63,000.00

8. Temple Stuart designated the territory in which petitioner was to sell and required practically his full time representation. Temple Stuart would cancel petitioner's representation if he represented another company which it disapproved. Temple Stuart Co. discharged a man who took on another line without asking about it. The Temple Stuart samples were always required to be taken out first. The Silver Craft Furniture line, a noncompeting line was taken on at the request of Temple Stuart.

9. Petitioner received the names of firms which he was to contact on specific matters and complaints. Each year he was sent a new list of the accounts that were to be called on. The list was regularly updated during the year and accounts were dropped and new accounts were added by Temple Stuart. Petitioner, depending on the

position of Temple Stuart was sometimes permitted to seek new accounts, but at other times he was not allowed to sell new accounts.

CONCLUSIONS OF LAW

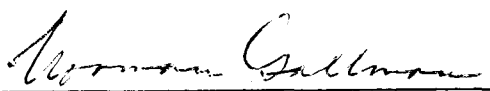
A. The manner and method in which the petitioner conducted his sales activities indicate that the petitioner was self-employed and subject to Unincorporated Business Tax. Matter of Frishman v New York State Tax Commission, 33 A.D. 2d 1071, Hardy v Murphy, 29 A.D. 2d 1038.

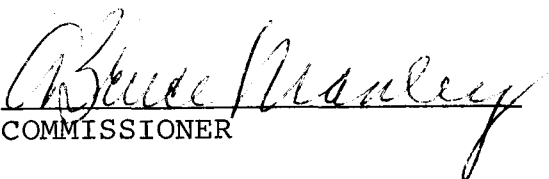
B. The deficiencies in Unincorporated Business Taxes as determined by the Income Tax Bureau for the years 1960, 1961, 1962, 1963 and 1964 are sustained.

C. Pursuant to the Tax Law, interest on the tax shall be added to the total amount due until the date of payment.

DATED: Albany, New York
March 5, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER