

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD BADLER

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 31st day of January, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon BERNARD BADLER

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

wrapper addressed as follows: Mr. Bernard Badler  
845 Jefferson Street  
Woodmere, New York 11598

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

31st day of January, 1974.

Judge S. Van Patten

Martha Funaro

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

BERNARD BADLER

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  
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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 31st day of January, 1974, she served the within  
Notice of Decision (or Determination) by (certified) mail upon SIDNEY FIELD, C.P.A.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows:

Sidney Field, C.P.A.  
1384 Beach Street  
Atlantic Beach, 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

31st day of January, 1974.

*James J. Van Patten*

*Martha Funaro*



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

~~MARIO A. PROCACCINO~~  
~~PRESIDENT~~

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York  
January 31, 1974

Mr. Bernard Badler  
845 Jefferson Street  
Woodmere, New York 11598

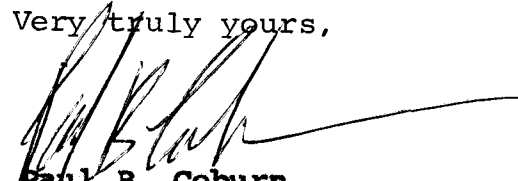
Dear Mr. Badler:

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	:	
BERNARD BADLER	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Year 1965.	:	

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Petitioner, Bernard Badler, 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. 46011053). 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 19, 1973, at 2:45 P.M. Petitioner appeared by Sidney Feld, C.P.A. The Income Tax Bureau appeared by Saul Heckelman, Esq. (Francis X. Boylan, Esq., of Counsel).

#### ISSUES

I. Did petitioner, Bernard Badler's activities as a home furnishings salesman during the year 1965 constitute the carrying on of an unincorporated business?

II. Did petitioner, Bernard Badler, have reasonable cause for failing to file a New York State unincorporated business tax return for the year 1965?

#### FINDINGS OF FACT

1. Petitioner, Bernard Badler, 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 August 25, 1969, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Bernard Badler, imposing unincorporated business tax in the sum of \$157.94 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 \$39.49 for failure to file a New York State unincorporated business tax return for said year. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$229.28.

3. During the year 1965, petitioner, Bernard Badler, was a home furnishings salesman. He represented four unaffiliated firms in the sale of said items. The products sold by him for each firm were noncompetitive. He spent approximately three months in rotation selling for each firm. Approximately fifty percent of his customers were common customers for all lines. He did not have any employees.

4. During the year 1965, the firms for whom petitioner, Bernard Badler, sold merchandise did not withhold Federal or New York State income taxes or social security tax for the commissions paid to him. They did not cover him for workmen's compensation, unemployment, disability or health insurance. They did not allow him a paid vacation. They did not exercise any substantial supervision or control over his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, Bernard Badler, was advised by his accountant 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, Bernard Badler, from the firms that he represented during the year 1965 constituted income from his regular business of selling home furnishings 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, Bernard Badler, 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.

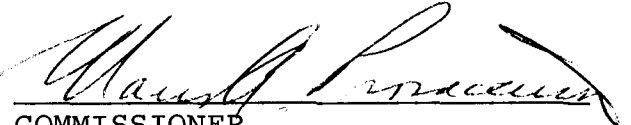
C. That petitioner, Bernard Badler, had reasonable cause for failing to file a New York State unincorporated business tax return for the year 1965, and therefore, the penalty assessed pursuant to sections 685(a) and 722 of the Tax Law is waived.

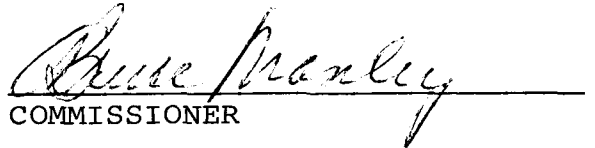
D. That the petition of Bernard Badler is granted to the extent of cancelling the penalty imposed pursuant to sections 685(a) and 722 of the Tax Law for the year 1965 in the sum of \$39.49; that the Income Tax Bureau is hereby directed to

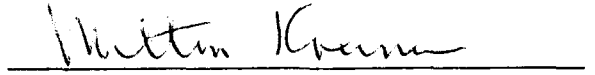
accordingly modify the Notice of Deficiency issued August 25, 1969; and, that except as so granted, the petition is in all other respects denied.

DATED: Albany, New York  
January 31, 1974

STATE TAX COMMISSION

  
COMMISSIONER

  
COMMISSIONER

  
COMMISSIONER