

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

WALTER D. BOWER

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

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 17th day of January, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Walter D. Bower

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

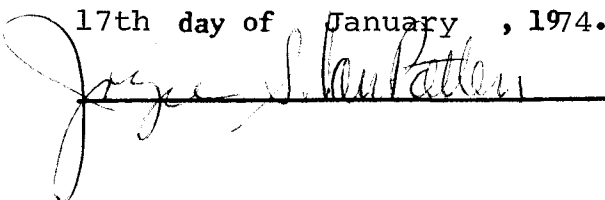
Mr. Walter D. Bower
R. D. #2
Trumansberg, New York 14886

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

17th day of January, 1974.



Joseph S. Katten



Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

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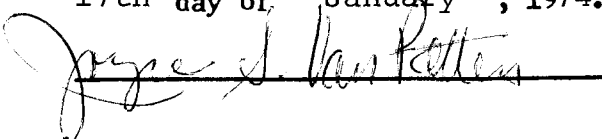
wrapper addressed as follows: Arthur J. Golder, Jr., Esq.
Wiggins, Tsapis, Golder & Holmberg
Main Street
Trumansburg, New York 14886

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known address of the (representative of the) petitioner.

Sworn to before me this

17th day of January, 1974.


Joyce S. Van Kotten


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

~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
January 17, 1974

Mr. Walter D. Bower
R. D. #2
Trumansburg, New York 14886

Dear Mr. Bower:

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,

L. Robert Leisner
HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
WALTER D. BOWER	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law for	:	
the Years 1965, 1966 and 1967.	:	

Petitioner, Walter D. Bower, petitioned for a redetermination of deficiencies in unincorporated business tax under Article 23 of the Tax Law for the years 1965, 1966 and 1967.

A formal hearing was held at the offices of the State Tax Commission, State Office Building, Syracuse, New York, on June 30, 1972, before L. Robert Leisner, Hearing Officer. The taxpayer was represented by Arthur J. Golder, Esq., and the Income Tax Bureau was represented by Saul Heckelman, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUE

Was the taxpayer an independent sales agent subject to the unincorporated business tax or an employee not subject to unincorporated business tax for the years 1965, 1966 and 1967?

FINDINGS OF FACT

1. Petitioner, Walter D. Bower, failed to timely file New York State unincorporated business tax returns for the years 1965, 1966 and 1967.

2. A Notice of Determination of deficiencies in unincorporated business tax for the years 1965, 1966 and 1967, was issued on October 27, 1969, against the taxpayer under File No. 74768047.

3. The taxpayer petitioned for redetermination of the deficiencies.

4. Taxpayer was a sales representative for several wholesale furniture firms. In 1965, 1966 and 1967, he worked principally for Craft Associates but also sold for at least four other firms.

5. Taxpayer maintained no office or showroom and employed no subordinates.

6. None of the firms withheld social security or income tax from the taxpayer and he was paid strictly on a commission basis.

7. Taxpayer's expenses were not paid by any of the firms and they exercised only minimal supervision and control over his sales activities in such areas as requiring him to be at company shows approximately three times per year for 1965, 1966 and 1967, and handling complaints from retailers and consumers. Taxpayer's hours of work and scheduling of contracts were normally at his own discretion.

8. Taxpayer filed a Schedule "C" on his Federal form on which he deducted business expenses.

9. Taxpayer acted in good faith in failing to file unincorporated business tax returns in 1965, 1966 and 1967.

10. Taxpayer contended that the denial of profession status to the occupation of salesman, pursuant to Tax Law §703, denies taxpayer the equal protection of the law under Article 1, section 10 of the Constitution of the State of New York and the 14th Amendment to the Constitution of the United States.

CONCLUSIONS OF LAW

A. Taxpayer was not an employee but was an independent sales agent and thus subject to the unincorporated business tax. Tax Law §703.

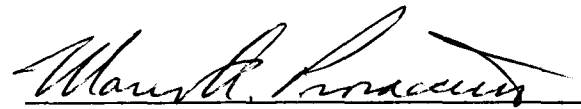
B. The penalty for failure to file in 1965, 1966 and 1967 is cancelled and remanded.

C. The deficiencies are redetermined and are modified by the cancellation of the above penalty. In all other respects, the deficiencies are sustained.

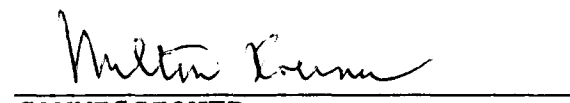
D. Pursuant to the Tax Law, interest shall be added to the total amount due until the date of payment.

DATED: Albany, New York
December 28, 1973

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER