of

JOE N. DAVINGER

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) 1964, 1965, 1966,

1967 & 1968

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 9th day of January , 1974, she served the within Notice of Decision (or Determination) by (certified) mail upon Joe N. Davinger

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

22 Glenwood Drive

Great Neck, New York 11021

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

9th day of January , 1974.

martin Dunaso

of

JOE N. DAVINGER

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) 1964, 1965, 1966, 1967 & 1968

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 9th day of January, 1974, she served the within Notice of Decision (or Determination) by (certified) madd upon A. Abba Koblenz, Esq.

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

90 State Street

1105-1106 National Savings Bank Bldg., Albany, N.Y. and by depositing same enclosed in a postpaid properly addressed wrapper in a 12207 (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

9th day of January , 1974.

marker Durano



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

ADDRESS YOUR REPLY TO

A. BRUCE MANLEY
MILTON KOERNER

Dated: Albany, New York

January 9, 1974

Mr. Joe M. Davinger 22 Glenwood Drive Great Neck, New York 11021

Dear Mr. Davinger:

Please take notice of the of the State Tax Commission enciosed herewith.

Please take further notice that pursuant to Section(s) 722 of the Tax Law, any proceeding in court to review an adverse decision must be commenced within 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,

HEARING OFFICE

Enc.

Petitioner's Representative

Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition

of

JOE N. DAVINGER

DECISION

for Redetermination of Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Years 1964, 1965, 1966, 1967 and 1968.

Petitioner, Joe 1. Parinter tas filed a petition for redetermination of deficiency or the refunding unincorporated business tax under Article 23 of the Tax Law for the years 1964, 1965, 1966, 1967 and 1968. (File No. 8-16161282). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, for December 12, 1973, at 10:00 A.M. On December 7, 1973, petitioner's representative, A. Abba Koblenz, Esq., advised the State Tax Commission, in writing, that petitioner waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did petitioner, Joe N. Davinger's activities as a ladies handbag salesman during the years 1964 through 1968 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Joe N. Davinger, and his wife, filed New York State income tax resident returns for the years 1964 through 1968. He did not file New York State unincorporated business tax returns for said years.

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- 2. On November 30, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Joe N. Davinger, imposing unincorporated business tax upon the income received by him from his activities as a ladies handbag salesman during the years 1964 through 1968. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency against him in the sum of \$6,873.38.
- 3. Petitioner, Joe N. Davinger, was a ladies handbag salesman during the years 1964 through 1968. He represented four or five unaffiliated firms in the sale of said items. The products sold by him for each firm were noncompetitive. He generally sold the products of the different firms to the same customers. He did not maintain an office. He did not have any employees.
- 4. During the years 1964 through 1968 one of the firms for whom petitioner, Joe N. Davinger, sold handbags paid him a draw against It withheld Federal and New York State income taxes and social security tax from the draw paid to him. The total compensation received from this firm represented 23 1/2% of his gross income for the year 1966 and 25% of his gross income for the year 1967. No proof was submitted as to said percentages for the other years. The other firms for whom he sold merchandise did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. He deducted unreimbursed business expenses incurred in connection with his sales activities on Schedule "C" of his personal income tax returns. He reported all of his income derived from the sale of handbags as "business income" on his New York State income tax returns. The firms for whom he sold merchandise did not exercise any substantial direction 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.

CONCLUSIONS OF LAW

- A. That the income received by petitioner, Joe N. Davinger, from the firms that he represented during the years 1964 through 1968 constituted income from his regular business of selling ladies handbags 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, Joe N. Davinger, during the years 1964 through 1968 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 Joe N. Davinger is denied and the Notice of Deficiency issued November 30, 1970, is sustained.

DATED: Albany, New York

January 9, 1974

STATE TAX COMMISSION

COMMISSIONER

OMMISSIONER

COMMISSIONER

of

JOE N. DAVINGER

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) 1964, 1965, 1966, 1967 & 1968

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 25th day of January , 19 74, she served the within Notice of Decision (or Determination) by (certified) mail upon Joe N. Davinger

(representative of) the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows: Mr. Joe N. Davinger
241 Central Parkway
New York, 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

25th day of January , 1974.

masta Dunaro

MEMORANDUM

Mr. Gabriel DiCerbo, Chief TO:

Review Unit

Income Tax Bureau

Room 104, Building #8

FROM: PBCabal, Hearing Unit

Room 214A, Building #9

RE:

JUE N. DAVINGER

1/21/74

SOCIAL SECURITY NO.

057-01-9639

Please advise as to the last known address for the above named taxpayer.

HEARING

Taxpayer's last known address is:

INCOME TAX BUREAU JAN 2 2 1974

REVIEW UNIT ALBANY OFFICE 241 Central Parkway 1972 return New York, New York

AD 32 (6.73) 250M

Department of Taxation and Finance STATE OF NEW YORK STATE CAMPUS

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ALBANY, N. Y. 12227

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Rosel, sor forestellers Addresses unknown)

22 Glenwood Drive

Great Neck, New York

257-01-9639



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

ADDRESS YOUR REPLY TO

STATE TAX COMMISSION

Dated: Albany, New York

January 9, 1974

Mr. Joe N. Davinger 22 Glenwood Drive Great Neck, New York 11021

Dear Mr. Davinger:

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 decision 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 Aruly yours

Fau/1 B. Coburn HEARING OFFICER

Enc.

Petitioner's Representative

Law Bureau

of

JOE N. DAVINGER

DECISION

for Redetermination of Deficiency or for Refund of Unincorporated Business Tax under Article 23 of the Tax Law for the Years 1964, 1965, 1966, 1967 and 1968.

Petitioner, Joe N. Davinger, has filed a petition for redetermination of deficiency or for refund of unincorporated business tax under Article 23 of the Tax Law for the years 1964, 1965, 1966, 1967 and 1968. (File No. 8-16161282). A formal hearing was scheduled before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Campus, Albany, New York, for December 12, 1973, at 10:00 A.M. On December 7, 1973, petitioner's representative, A. Abba Koblenz, Esq., advised the State Tax Commission, in writing, that petitioner waived a formal hearing and submitted the case to the State Tax Commission upon the entire record contained in the file. The State Tax Commission renders the following decision after due consideration of said record.

ISSUE

Did petitioner, Joe N. Davinger's activities as a ladies handbag salesman during the years 1964 through 1968 constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioner, Joe N. Davinger, and his wife, filed New York State income tax resident returns for the years 1964 through 1968. He did not file New York State unincorporated business tax returns for said years.

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- 2. On November 30, 1970, the Income Tax Bureau issued a Sintement of Audit Changes against petitioner, Joe N. Davinger, imposing unincorporated business tax upon the income received by him Line. his activities as a ladies handbag salesman during the years 1984, through 1968. In accordance with the aforesaid Statement of Mulit-Changes, it issued a Notice of Deficiency against him in the Sun of \$6,873.38.
- 3. Petitioner, Joe N. Davinger, was a ladies handbeg selection during the years 1964 through 1968. He represented four or live unaffiliated firms in the sale of said items. The products said by him for each firm were noncompetitive. He generally sold the products of the different firms to the same dustomers. He did not maintain an office. He did not have any employees.
- During the years 1964 through 1968 one of the firms for whom petitioner, Joe N. Davinger, sold handbags paid him a draw against commissions. It withheld Federal and New York State income taxes and social security tax from the draw paid to him. The total con pensation received from this firm represented 23 1/2% of his gross income for the year 1966 and 25% of his gross income for the year 1967. No proof was submitted as to said percentages for the other years. The other firms for whom he gold merchandise did not withhold Pederal or New York State income taxes or social security tax from the commissions paid to him. He deducted unreimburged business expenses indurred in connection with his sales activities on Schedule "C" of his personal income tar returns. He reported all of his income derived from the sale of handbags as "business income" on his New York State income tax returns. The firms for whom he cold merchandise did net exercise any substantial direction or control ever his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

- 21 On Nevenber 30, 1970, the income may hireau issued a shate-ment of addit Changes against patitioner, Joe N. Davinger, imposing antheorparated business tax upon the income greetved by him from hits activities as it ladies handhas calesman during the veers 1964 through 1965. In accordance with the storagest Statement of Andit Changes, it is accordance with the storagest him in the sum Changes, it is appeal a Notice of Delicieacy against him in the sum of Santas
- F. Priident, Joh W. Davinger, was a ladies handhed saisshen during the vears 1964 through 1966. He represented four or five uniasithiated firms in the male of maid items. The products sold in the for each line were non-topetative. He emernily solf the products if therefaltereat firms to the same customers. He did not maintain an office its did not have any employees.
- 4. Marthy the years 1964 through 1968 one of the limit for whom peticioner, Joe W. Davinger, sold hondbage paid him a drew acainst edictions, It withheld Jederni and Mew York State income taxes and enchal acquistly tax from the draw wold to him. Denmision repetred from this firm represented 23 1/2% of his great income for the year 1365 and 25% of his pross income for the year No nexat was such that as to said percentages for the ether versa. The other firms for whom we gold nerchandles did not withhold redered of your tout supplied adopted cover or necked so purity has know the completions-usid to fir. Me defect d vareimbuteed business expenses marred in connection with his waise activities on Schelnia "C" of the personal lipone tay petupot. As reported of his income derived from the sale of hundrops as "business income" on hile see form State succeed tak returner The fire a for alon he sold merchantise did not exercise any estate is direction or control over his saids actives of technique or over the time he devoted to sales except to dinit the terrifory in which he could sell.

CONCLUSIONS OF LAW

- A. That the income received by petitioner, Joe N. Davinger, from the firms that he represented during the years 1964 through 1968 constituted income from his regular business of selling ladies handbags 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, Joe M. Davinger, during the years 1964 through 1968 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 Joe N. Davinger is denied and the Metice of Deficiency issued November 30, 1970, is sustained.

DATED: Albany, New York

January 9, 1974

STATE TAX COMMISSION

COMMISSIONER

COUNTERTON

CONTRATORES

WILL TO RECOVER OF LINE

- A. That the indome received by partitioner, he M. Davinger, from the Cirus that he recreatived during the years 1964 through 1965 compitivated indom from his requist business of salling ladies, handhags and not compensation as an amiloyee exampt from the imposition of the unincorporated business tax in accordance with the meaning and intention section 703(b) of the arxive and intention section 703(b) of the arx law.
- B. Shet the aforesaid activities of perliconer, Joe M. Davingar, during the years 1965 through 1965 constituted the carrying on of all unincorporated business and his income derived therefor was subject to the unincorporated business too in accordance with the meaning and intent of section 103 of the Tay Law.
- C. That the petation of Jos M. Pavinger is donted and the Notice of Peficiency is sued Forester 30, 1970, is sustained.

DATED: Middle, New York

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COMMISSING

GSIZZAT SOTHING