

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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

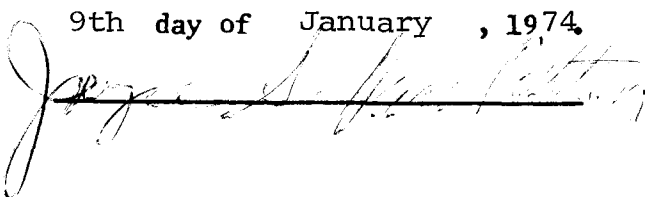
wrapper addressed as follows: Mr. Joe N. Davinger
22 Glenwood Drive
Great Neck, New York 11021


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.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

JOE N. DAVINGER

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AFFIDAVIT OF MAILING
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State of New York
County of Albany

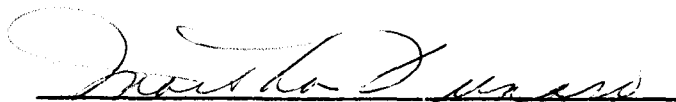
Martha Funaro , being duly sworn, deposes and says that
she is an employee of the Department of Taxation and Finance, over 18 years of
age, and that on the 9th day of January , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon A. Abba Koblenz, Esq.

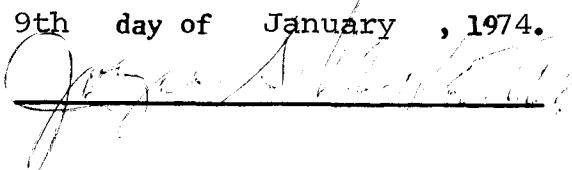
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: A. Abba Koblenz, Esq.
Koblenz & Koblenz
90 State Street
1105-1106 National Savings Bank Bldg., Albany, N.Y.
and by depositing same enclosed in a postpaid 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.







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

~~XXXXXXXXXXXX~~ Mario A. Procaccino,
PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

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 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	:	
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 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 commissions. 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

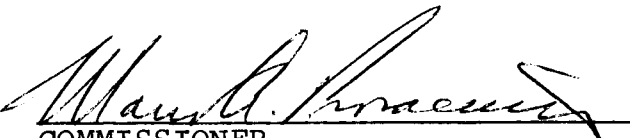
A. That the income received by petitioner, Joe N. Davinger, from the firms that he represented during the years 1964 through 1968 constituted income from his regular business of selling ladies handbags and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

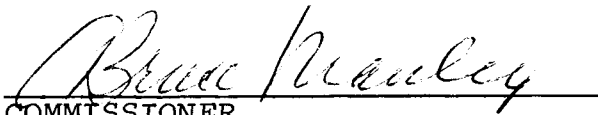
B. That the aforesaid activities of petitioner, Joe N. Davinger, during the years 1964 through 1968 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the 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


COMMISSIONER


COMMISSIONER

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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.



MEMORANDUM

TO: Mr. Gabriel DiCerbo, Chief
Review Unit
Income Tax Bureau
Room 104, Building #8

DATE:

1/21/74

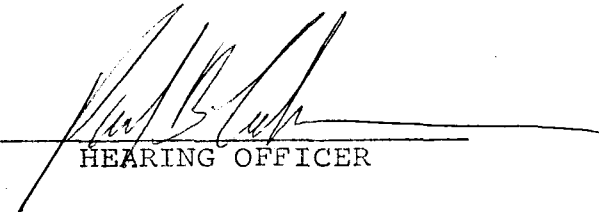
SOCIAL SECURITY NO.

FROM: *P. B. C.*
Hearing Unit
Room 214A, Building #9

RE: JOE M. DAVINGER

057-01-9639

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


HEARING OFFICER

Taxpayer's last known address is:

RECEIVED
NEW YORK STATE
INCOME TAX BUREAU
JAN 21 1974
REVIEW UNIT
ALBANY OFFICE

241 Central Parkway
New York, New York
1972 return

STATE OF NEW YORK
Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227



☒ Moved, left no address

☐ No such number

☐ Moved, not forwardable

☐ Address unknown

Initials *JN* *Mr.* Joe N. Davinger

22 Glenwood Drive

Great Neck, New York 11021

057-01-9639



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

STATE TAX COMMISSION

Mario A. Procaccino,
~~XXXXXXXXXXXX~~ PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

Dated: Albany, New York

January 9, 1974

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

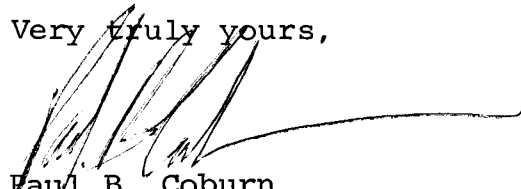
Dear Mr. Davinger:

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 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 :

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.

of

1500000

MR. TOLSON: Yes, sir.

and 1949.
for the years 1944, 1945, 1946,
tax under Article 23 of the New Law
for the purpose of determining the
total of the amounts payable for
the determination of liability for

[illegible]

1000

Did petitioner, Joe W. Brumbyer's activities as a trading hardware salesman during the years 1954 through 1960 constitute the carrying out of an unincorporated business?

ROAD TO DEATH

1. Defendant, Joe J. Gagliardi, and his wife, Ethel Gagliardi, State income tax returns for the years 1946 through 1949. He did not file New York State unemployment insurance tax returns for said years.

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 commissions. 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.

1. On November 30, 1950, the Income Tax Bureau issued a notice of audit changes against petitioner, Joe M. Davinger, imposing an increased business tax upon the income received by him from his activities as a ladies handbag salesman during the years 1944 through 1949. In accordance with the aforesaid statement of audit changes, it issued a Notice of Deficiency against him in the sum of \$2,871.36.

2. Petitioner, Joe M. Davinger, was a ladies handbag salesman during the years 1944 through 1949. 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 at the different times to the same customers. He did not maintain an office. He did not have any employees.

3. During the years 1944 through 1949 one of the firms for whom petitioner, Joe M. 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 commission received from this firm represented 23.12% of his gross income for the year 1946 and 25% of his gross income for the year 1947. No profit 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 withheld 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

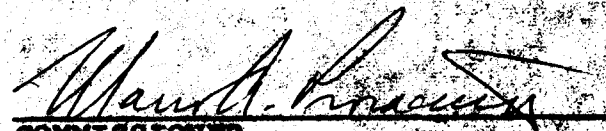
A. That the income received by petitioner, Joe N. Davinger, from the firms that he represented during the years 1964 through 1968 constituted income from his regular business of selling ladies handbags and not compensation as an employee exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

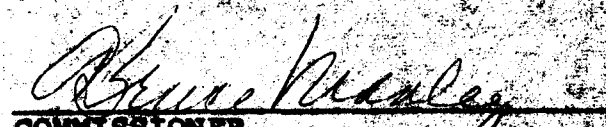
B. That the aforesaid activities of petitioner, Joe N. Davinger, during the years 1964 through 1968 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

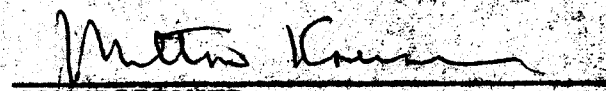
C. That the petition of Joe N. Davinger is denied and the Notice of Deficiency issued November 30, 1970, is sustained.

DATED: Albany, New York
January 9, 1974

STATE TAX COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER

CONCLUSIONS OF LAW

- A. That the income received by petitioner, Joe M. Davinger, from the time that he was created during the years 1966 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 measure and intent of section 703(d) of the Tax Law.
- B. That the extended activities of petitioner, Joe M. Davinger, during the years 1966 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 M. Davinger is denied and the Notice of Deficiency issued November 30, 1970, is sustained.

STATE TAX COMMISSION

DATED: Albany, New York

January 9, 1971

COMMISSIONER

COMMISSIONER

COMMISSIONER