

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

IRVING DENBY & MURIEL DENBY :

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) 1967 :

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 16th day of September , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Irving Denby &
Muriel Denby (representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. & Mrs. Irving Denby
215 E. 80th Street
New York, New York 10021

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

16th day of September , 1974

Janet M. [Signature]

Martha Funaro



STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK
SECRETARY TO
COMMISSION

STATE TAX COMMISSION

MARIO A. PROCACCINO, PRESIDENT
A. BRUCE MANLEY
MILTON KOERNER

BUILDING 9, ROOM 214-A
STATE CAMPUS
ALBANY, N.Y. 12227

AREA CODE 518

ADDRESS YOUR REPLY TO

MR. WRIGHT 457-2655
MR. LEISNER 457-2657
MR. COBURN 457-2896

Dated: Albany, New York

September 16, 1974

Mr. & Mrs. Irving Denby
215 E. 80th Street
New York, New York 10021

Dear Mr. & Mrs. Denby:

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,

Nigel G. Wright

HEARING OFFICER

Enc.

cc: Petitioner's Representative
Law Bureau

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
IRVING DENBY and MURIEL DENBY	:	DECISION
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1967.	:	
	:	

Petitioner, Irving Denby and Muriel Denby, petitioned for redetermination of a deficiency or for refund of unincorporated business taxes under Article 23 of the Tax Law for the year 1967. (File No. 84149560). A formal hearing was held at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 11, 1973, at 9:00 A.M., before Nigel G. Wright, Hearing Officer. Petitioner, Irving Denby, appeared in person, and the Income Tax Bureau was represented by Saul Heckelman, Esq., (James A. Scott, Esq., of counsel).

ISSUE

Did petitioner, Irving Denby's activities as a salesman constitute the carrying on of an unincorporated business?

FINDINGS OF FACT

1. Petitioners, Irving Denby and Muriel Denby, filed New York State resident and Federal income tax returns for the year 1967. They did not file a New York State unincorporated business tax return for said year.

2. On January 26, 1970, the Income Tax Bureau issued a Statement of Audit Changes against petitioners, Irving Denby

and Muriel Denby, imposing unincorporated business tax upon the income received by Irving Denby from his activities as a salesman during the year 1967. In accordance with the aforesaid Statement of Audit Changes, the Bureau issued a Notice of Deficiency against petitioners in the sum of \$279.82.

3. Petitioner, Irving Denby, was a salesman for Hut Neckwear Co., Inc. in 1967. He also sold sweaters for Gino Paoli and Parker of Vienna. He traveled in a seven-state area, primarily selling neckwear for Hut Neckwear Co., Inc. and handled the merchandise of the other two companies merely to supplement his income.

4. Petitioner, Irving Denby, was also an officer of Hut Neckwear Co., Inc. in 1967. His income from Hut was subject to withholding of Federal, New York State and social security taxes. He was also eligible for employee pension and major medical plans.

5. Petitioner, Irving Denby, received commissions from his sales for Gino Paoli and Parker of Vienna. There were no withholding of taxes, no social security withholding and no pension arrangements with these companies. These companies did not compete with Hut Neckwear Co., Inc. whose management permitted petitioner to sell for all three companies.

6. Petitioner, Irving Denby, deducted business expenses on his Federal return for 1967. These expenses included away from home expenses, which were unreimbursed by any of the three companies. He did not allocate these expenses according to his separate activities with each of the companies.

7. Petitioner acted in good faith in not filing a unincorporated business tax return.

CONCLUSIONS OF LAW

A. That petitioner, Irving Denby, was an employee of Hut Neckwear Co., Inc. and therefore, was not subject to unincorporated business tax for his selling activities for the aforesaid company.

B. That petitioner, Irving Denby, was in the regular business of selling articles of apparel in 1967, while selling for Gino Paoli and Parker of Vienna and was subject to unincorporated business tax in accordance with the meaning and intent of section 703(f) of the Tax Law.

C. That the penalty assessed on the Statement of Audit Changes issued on January 26, 1970, is hereby cancelled.

D. That the petition of Irving Denby and Muriel Denby is sustained in respect to his income from Hut Neckwear Co., Inc. and is in all respects denied.

DECISION

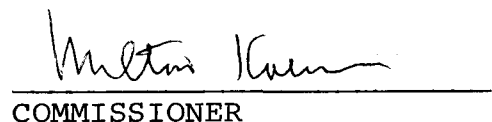
Based on a computation by the Income Tax Bureau, there is no business tax due and the assessment is cancelled.

DATED: Albany, New York
September 16, 1974

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER