

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT D. & CLARE M. EDELSTEIN

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) 1963

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 19th day of March , 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Paul Horkimer, C.P.A.

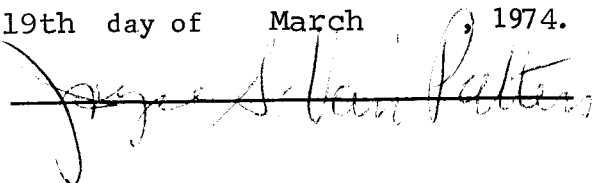
(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Paul Horkimer, C.P.A.
1155 Montauk Highway
East Patchogue, New York 11772

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

19th day of March , 1974.





STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT D. & CLARE M. EDELSTEIN

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) 1963. :

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 6th day of March, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Mr. & Mrs.
Robert D. Edelstein (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. Robert D. Edelstein
645 Lakeview Avenue
Rockville Centre, L.I., 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

6th day of March, 1974

Nigel D. Wright

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

ROBERT D. & CLARE M. EDELSTEIN

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) 1963. :

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 6th day of March, 1974, she served the within
Notice of Decision (or Determination) by (certified) mail upon Paul Horkimer,
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:

Paul Horkimer, C.P.A.
132 Nassau Street
New York, New York 10038

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

6th day of March, 1974

Myel M. Light

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~~ ACTING PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

ADDRESS YOUR REPLY TO

DATED: Albany, New York
March 6, 1974

Mr. & Mrs. Robert D. Edelstein
645 Lakeview Avenue
Rockville Centre, L. I., New York

Dear Mr. & Mrs. Edelstein:

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,

Edward Rook
EDWARD ROOK
~~XXXXXXXXXXXX~~

Secretary, State Tax Commission

Enc.

cc: Petitioner's Representative
Law Bureau

AD 32 (6-73) 280M

STATE OF NEW YORK

Department of Taxation and Finance

STATE CAMPUS

ALBANY, N. Y. 12227

Paul Horkimer, C.P.A.

132 Nassau Street

New York, New York 10038

254113

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
ROBERT D. & CLARE M. EDELSTEIN	:	DECISION
	:	
for a Redetermination of a Deficiency	:	
or for Refund of Unincorporated Business	:	
Taxes under Article 23 of the Tax Law	:	
for the Year 1963.	:	
	:	
	:	

Petitioners, Robert D. Edelstein and Clare M. Edelstein, petitioned for redetermination of a deficiency or for refund of unincorporated business tax for the year 1963.

A formal hearing was held before L. Robert Leisner, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on March 4, 1971. Petitioners were represented by Paul Horkimer, C.P.A., and the Income Tax Bureau was represented by Edward H. Best, Esq., (Alexander Weiss, Esq., of Counsel).

ISSUES

I. Did the activities of Robert D. and Clare M. Edelstein constitute the carrying on of an unincorporated business under section 703 of the Tax Law?

II. Were petitioners subject to a penalty under section 685(a) of the Tax Law?

FINDINGS OF FACT

1. Petitioners, Robert D. and Clare M. Edelstein, timely filed New York State income tax returns, but did not file New York

State unincorporated business tax returns for the year 1963.

2. A Notice of Determination of a deficiency in unincorporated business tax was issued on September 25, 1967, against Robert D. Edelstein under file number 3-4951562.

3. The Income Tax Bureau determined that Robert D. Edelstein's activities as a salesman were subject to unincorporated business tax for the year 1963, and determined a deficiency in unincorporated business tax and a 25% penalty against him.

4. The petitioners timely filed a petition for a redetermination of the deficiency in tax and penalty for the year 1963.

5. Clare M. Edelstein did not take part in any unincorporated business in 1963 and no deficiency has been determined against her.

6. Petitioner, Robert D. Edelstein, was a salesman for Play Land Industries and sold its Play Land, Kaper-Jac and Kitty Kapers lines. Play Land was a childrens' snow suit line and Kaper-Jac and Kitty Kapers were lines of ski jackets and casual coats for children. He also sold for Hi-Line, a little boys' wearing apparel line.

7. There was no withholding of income tax or Social Security tax by either firm.

8. He received straight commissions from Play Land Industries and Hi-Line Co., Inc. Petitioner was not reimbursed for sales expenses.

9. In 1963, petitioner filed a Schedule "C" with his Federal tax return. He listed office expenses, phone, sales show expense, samples, supplies, traveling expenses, entertainment, stationery and other selling expenses, none of which were reimbursed.

10. Petitioner had installed paneling and a Kentile floor in a room in the basement of his home and he used this room for his desk, typewriter and records.

11. Play Land Industries Inc. and Hi-Line Co., Inc. were in the same building.

12. Petitioner had a written contract specifying the territory, method of operation and listing to whom he could sell and to whom he could not sell. Petitioner could only carry the lines of Play Land Industries Inc. and Hi-Line Co., Inc. They were noncompeting. Petitioner was not permitted to carry any other lines.

13. Petitioner had the New England territory, consisting of New Hampshire, Maine, Vermont, Connecticut, Massachusetts and Rhode Island. Petitioner had a list of accounts he was permitted to call on, and a list of accounts he could not call on, which included the house accounts. Petitioner had to report to the companies at definite times. He worked from about 9:00 A.M. until the stores closed, which might be as late as 9:00 P.M. Petitioner was expected to bring in new accounts but the overwhelming bulk of his income was derived from accounts that the firms had been selling to, prior to petitioner's representation. Petitioner had to work up his itinerary in advance and it was subject to the approval of the sales manager.

14. Petitioner's vacation had to be approved in advance and could not interfere with the selling requirements of the firms.

15. When petitioner was not on the road, he was required to be in the New York showrooms and take care of any accounts that would come in there.

16. Later and subsequent to 1963, Hi-Line Co., Inc. went out of business and petitioner became the sales manager for Play Land Industries, Inc.

CONCLUSIONS OF LAW

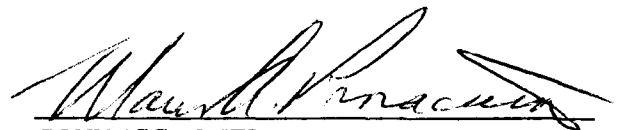
A. No unincorporated business tax liability has been determined against Clare M. Edelstein and she has no liability for unincorporated business tax or penalty.

B. Under section 703(f) of the Tax Law, Robert D. Edelstein, was an independent sales representative, selling goods for Play Land Industries, Inc., and Hi-Line Co., Inc. Petitioner, Robert D. Edelstein, in his sales work was not an employee of Play Land Industries, Inc., and Hi-Line Co., Inc. Petitioner's sales activities were subject to unincorporated business tax in 1963 within the meaning and intent of section 703(f) of the Tax Law. Petitioner acted in good faith and the penalty is cancelled.

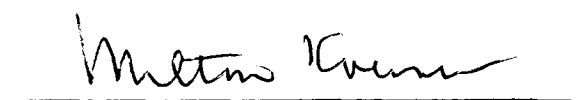
C. The petition of Robert D. Edelstein is otherwise denied and it is determined that he is liable for unincorporated business tax for the year 1963.

DATED: Albany, New York
March 6, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER