

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

of

MATTHEW FERENZO

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 & 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 8th day of March , 19 74 she served the within
Notice of Decision (or Determination) by (certified) mail upon Matthew Ferenzo

(representative of) the petitioner in the within
proceeding, by enclosing a true copy thereof in a securely sealed postpaid
wrapper addressed as follows: Mr. Matthew Ferenzo
1355 East 18th Street
Brooklyn, New York 11230

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

8th day of March , 1974.

Joyce S. Van Patten

Martha Funaro

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition

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MATTHEW FERENZO

AFFIDAVIT OF MAILING
OF NOTICE OF DECISION
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a Refund of Unincorporated Business:
Taxes under Article(s) 23 of the
Tax Law for the Year(s) 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 8th day of March , 19 74, she served the within
Notice of Decision (or Determination) by (certified) mail upon Peter J. LaBarbera,
Esq.

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

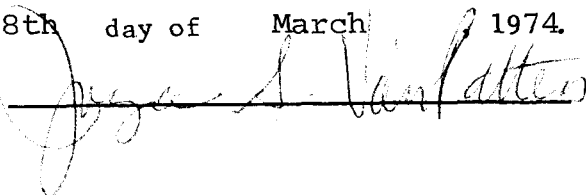
350 Fifth Avenue
New York, New York 10001

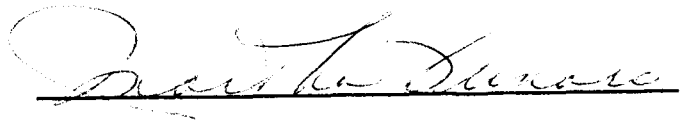
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8th day of March 1974.







STATE OF NEW YORK
DEPARTMENT OF TAXATION AND FINANCE

BUILDING 9, ROOM 214A

STATE CAMPUS

ALBANY, N. Y. 12227

AREA CODE 518

457-2655, 6, 7

STATE TAX COMMISSION

Mario A. Procaccino,

~~NORMAN F. SALERNO~~, PRESIDENT

A. BRUCE MANLEY

MILTON KOERNER

STATE TAX COMMISSION
HEARING UNIT

EDWARD ROOK

SECRETARY TO
COMMISSION

ADDRESS YOUR REPLY TO

Dated Albany, New York

March 8, 1974

Mr. Matthew Ferenzo
1355 East 18th Street
Brooklyn, New York 11230

Dear Mr. Ferenzo:

Please take notice of the **DECISION** of
the State Tax Commission enclosed herewith.

Please take further notice that pursuant to **section 722 of**
the Tax Law any proceeding in court to review an adverse decision
must be commenced within **4 Months** after
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 relat-
ing 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

cc Petitioner's Representative
Law Bureau

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
MATTHEW FERENZO	:	DECISION
for Redetermination of Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1967 and 1968.	:	

Petitioner, Matthew Ferenzo, 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 1967 and 1968.
(File No. 8-18728180).

A formal hearing was held before Paul B. Coburn, Hearing Officer, at the offices of the State Tax Commission, 80 Centre Street, New York, New York, on December 21, 1973, at 9:00 A.M. Petitioner appeared by Peter J. La Barbera, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of Counsel).

ISSUES

I. Did petitioner, Matthew Ferenzo's activities as a textile salesman during the years 1967 and 1968 constitute the carrying on of an unincorporated business?

II. Did petitioner, Matthew Ferenzo, have reasonable case for failing to file New York State unincorporated business tax returns for the years 1967 and 1968?

FINDINGS OF FACT

1. Petitioner, Matthew Ferenzo, and his wife, filed New York State combined income tax returns for the years 1967 and 1968. He did not file New York State unincorporated business tax returns for said years.

2. On May 24, 1971, the Income Tax Bureau issued a Statement of Audit Changes against petitioner, Matthew Ferenzo, imposing unincorporated business tax in the sum of \$3,139.69 upon the income received by him from his activities as a salesman during the years 1967 and 1968. It also imposed a penalty in the sum of \$784.93 for failure to file New York State unincorporated business tax returns for said years. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$4,380.57.

3. Petitioner, Matthew Ferenzo, was a textile salesman during the years 1967 and 1968. He represented in excess of four firms in the sale of textile products. He did not have an office. He did not have any employees. The products sold by him for each firm were noncompetitive.

4. During the years 1967 and 1968, the firms for whom petitioner, Matthew Ferenzo, sold textiles did not withhold Federal or New York State income taxes or social security tax from the commissions paid to him. He did not receive paid vacations or pension benefits. They did not reimburse him for any of his business expenses. The firms for whom he sold merchandise did not exercise any substantial control or supervision over his sales activities or techniques or over the time he devoted to sales, except to limit the territory in which he could sell.

5. Petitioner, Matthew Ferenzo, was advised by his accountant that he was not required to file New York State unincorporated business tax returns for the years 1967 and 1968.

CONCLUSIONS OF LAW

A. That the income received by petitioner, Matthew Ferenzo, from the firms that he represented during the years 1967 and 1968 constituted income from his regular business of selling textiles

and not compensation as an employee exempt from the imposition of the unincorporated business tax law in accordance with the meaning and intent of section 703(b) of the Tax Law.

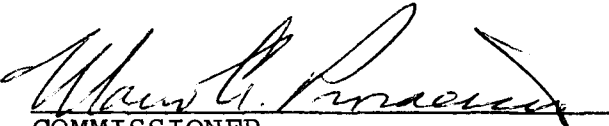
B. That the aforesaid activities of petitioner, Matthew Ferenzo, during the years 1967 and 1968 constituted the carrying on of an unincorporated business and his income derived therefrom was subject to the unincorporated business tax in accordance with the meaning and intent of section 703 of the Tax Law.

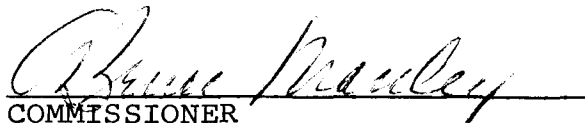
C. That petitioner, Matthew Ferenzo, had reasonable cause for not filing New York State unincorporated business tax returns for the years 1967 and 1968, and therefore, the penalty assessed pursuant to section 685(a) of the Tax Law is waived.

D. That the petition of Matthew Ferenzo is granted to the extent of cancelling the penalty imposed pursuant to section 685(a) of the Tax Law for the years 1967 and 1968 in the total sum of \$784.93; that the Income Tax Bureau is hereby directed to accordingly modify the Notice of Deficiency issued May 24, 1971; and, that, except as so granted, the petition is in all other respects denied.

DATED: Albany, New York
March 8, 1974

STATE TAX COMMISSION


COMMISSIONER


COMMISSIONER


COMMISSIONER