

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT B. GROSSMAN

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

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Janet Mack , 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 23rd day of December , 1974 , she served the within  
Notice of Decision (~~or Redetermination~~) by (certified) mail upon Albert B. Grossman

(~~representative of~~) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Mr. Albert B. Grossman  
Box 68  
Bearsville, 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

23rd day of December , 1974

Martha Suran

Janet Mack

STATE OF NEW YORK  
STATE TAX COMMISSION

In the Matter of the Petition

of

ALBERT B. GROSSMAN

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

AFFIDAVIT OF MAILING  
OF NOTICE OF DECISION  
BY (CERTIFIED) MAIL

State of New York  
County of Albany

Janet Mack, 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 23rd day of December, 1974, she served the within  
Notice of Decision ~~(for Redetermination)~~ by (certified) mail upon Sidney Meyers, Esq.

(representative of) the petitioner in the within  
proceeding, by enclosing a true copy thereof in a securely sealed postpaid  
wrapper addressed as follows: Sidney Meyers, Esq.  
51 Chambers Street  
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

23rd day of December, 1974

Martha Durand

Janet Mack



STATE OF NEW YORK  
DEPARTMENT OF TAXATION AND FINANCE

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

STATE TAX COMMISSION  
HEARING UNIT

EDWARD ROOK  
SECRETARY TO  
COMMISSION

ADDRESS YOUR REPLY TO

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

**DATED:** Albany, New York  
**December 23, 1974**

**Mr. Albert B. Grossman**  
**Box 68**  
**Bearsville, New York**

**Dear Mr. Grossman:**

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

Please take further notice that pursuant to  
Section ~~(a)~~ **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

AD-1.12 (8/73)

STATE OF NEW YORK  
STATE TAX COMMISSION

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In the Matter of the Petition	:	
of	:	
ALBERT B. GROSSMAN	:	DECISION
for Redetermination of a Deficiency or	:	
for Refund of Unincorporated Business	:	
Tax under Article 23 of the Tax Law	:	
for the Years 1964, 1965 and 1966.	:	

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Petitioner, Albert B. Grossman, 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 and 1966. (File No. 66226975).

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 July 17, 1973, at 9:15 A.M. Petitioner appeared by Sidney Meyers, Esq. The Income Tax Bureau appeared by Saul Heckelman, Esq., (Francis X. Boylan, Esq., of counsel).

ISSUES

I. Did the activities of petitioner, Albert B. Grossman, during the years 1964, 1965 and 1966, of finding and recommending authors, composers and writers of musical compositions to M. Witmark & Sons constitute the carrying on of an unincorporated business?

II. Were the activities of petitioner, Albert B. Grossman, as an employee of Trio Concerts, Inc. and Albert B. Grossman Management, Inc. during the years 1964, 1965 and 1966, so interrelated and integrated with his activities in connection with his business of finding and recommending authors, composers and writers of musical compositions to M. Witmark & Sons as to constitute part of a business carried on by him?

FINDINGS OF FACT

1. Petitioner, Albert B. Grossman, and his wife filed New York State income tax resident returns for the years 1964, 1965 and 1966. 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, Albert B. Grossman, imposing unincorporated business tax upon the business income which he received under his contract with M. Witmark & Sons and the salary income which he received from Trio Concerts, Inc. and Albert B. Grossman Management, Inc. during the years 1964, 1965 and 1966. It also imposed a penalty for failure to file unincorporated business tax returns for said years. For the year 1964, it imposed unincorporated business tax in the sum of \$3,466.02 and a penalty in the sum of \$866.50. For the year 1965, it imposed unincorporated business tax in the sum of \$3,989.72 and a penalty in the sum of \$977.43. For the year 1966, it imposed unincorporated business tax in the sum of \$10,625.60 and a penalty in the sum of \$2,656.40. In accordance with the aforesaid Statement of Audit Changes, it issued a Notice of Deficiency in the sum of \$27,713.48.

3. During the years 1964, 1965 and 1966, petitioner, Albert B. Grossman, had a written contract with M. Witmark & Sons, a publishing company. They had originally entered into said contract on July 30, 1962. Under its terms, he agreed to use his best efforts to recommend to M. Witmark & Sons, authors, composers and writers of musical compositions. Once he had recommended a certain composer, he had no further responsibility. If the company accepted his recommendation, it would enter into a contract with the particular artist. The company agreed that, in addition to royalties to be paid under

the separate agreements with each of the authors, composers and writers recommended by him, it would pay petitioner, semiannually 50% of the net profits from the publication, sale and use of the compositions of said authors, composers and writers. It did not withhold Federal or New York State income taxes or social security tax from the royalties paid to him. He was not reimbursed for any of his business expenses which included entertaining composers and traveling. He deducted these expenses on Schedule "C" of his Federal income tax returns for the years in question. He received \$38,077.42 during 1964, \$56,853.08 during 1965 and \$222,679.92 during 1966, from M. Witmark & Sons.

4. During 1964, 1965 and 1966, petitioner, Albert B. Grossman, was an officer, employee and stockholder of Trio Concerts, Inc. His activities consisted of developing and promoting concerts and personal appearances for the folk group, Peter, Paul and Mary. The corporation withheld Federal and New York State income taxes and social security from the salary which it paid to him. It paid him a salary of \$56,500.00 in 1964, \$53,000.00 in 1965 and \$52,000.00 in 1966.

5. During 1964, 1965 and 1966, petitioner, Albert B. Grossman, was also an officer, employee and stockholder of Albert B. Grossman Management, Inc. His activities consisted of trying to develop new talent. The corporation paid him a salary of \$2,800.00 during the year 1964, from which it withheld Federal and New York State income taxes and social security tax. He did not receive a salary from the corporation during the years 1965 and 1966.

#### CONCLUSIONS OF LAW


A. That the activities of petitioner, Albert B. Grossman, pursuant to his contract with M. Witmark & Sons during the years 1964, 1965 and 1966, 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.

B. That the activities of petitioner, Albert B. Grossman, as an employee of Trio Concerts, Inc. and Albert B. Grossman Management, Inc. were not so integrated and interrelated with his activities in connection with his unincorporated business as to constitute part of a business regularly carried on by him, and, therefore, the salary received by him for services as an employee of said corporations was exempt from the imposition of the unincorporated business tax in accordance with the meaning and intent of section 703(b) of the Tax Law.

C. That the petition of Albert B. Grossman is granted to the extent of reducing unincorporated business tax due for the year 1964 from \$3,466.02 to \$1,094.02, for the year 1965 from \$3,989.72 to \$1,869.72 and for the year 1966 from \$10,625.60 to \$8,545.60, together with such interest as may be lawfully due and of reducing the penalty imposed pursuant to section 685(a) of the Tax Law for the year 1964 from \$866.50 to \$273.51, for the year 1965 from \$997.43 to \$467.43 and for the year 1966 from \$2,656.40 to \$2,106.23; 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  
December 23, 1974

STATE TAX COMMISSION

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER